

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Davis & Associates Communications, Inc.**

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**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Davis & Associates Communications, Inc.  
Contract No. SFMTA-2016-38/2 (LOCAL)**

This Agreement is made this 4<sup>th</sup> day of April, 2017, in the City and County of San Francisco, State of California, by and between Davis & Associates Communications, Inc., 1388 Sutter Street, Suite 1200, San Francisco, CA 94109 (Contractor) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

- A. The SFMTA wishes to contract with a qualified public relations firm for public outreach and engagement services to be provided on an as-needed basis.
- B. The SFMTA issued a Request for Proposals (RFP) on July 29, 2016 and selected Contractor as the highest qualified scorer pursuant to the RFP.
- C. The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 30%.
- D. Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- E. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 41409-15/16 on 01/04/2016.

Now, THEREFORE, the Parties agree as follows:

**Article 1 Definitions**

The following definitions apply to this Agreement:

- 1.1 Agreement:** This contract document and all referenced appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference.
- 1.2 Award:** Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute this Agreement.
- 1.3 City:** The City and County of San Francisco, a municipal corporation, acting by and through the SFMTA.

- 1.4 CMD:** The Contract Monitoring Division of the City.
- 1.5 CCO:** The Contract Compliance Office of the SFMTA.
- 1.6 Contractor:** Davis & Associates Communications, Inc.
- 1.7 Days:** Unless otherwise designated, the word “Days” refers to working days of the City, which are generally Monday through Friday, excluding holidays. The use of the term “days,” “working days” or “business days” in this Agreement shall be synonymous.
- 1.8 Deliverables:** Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.
- 1.9 Director:** The Director of Transportation of the SFMTA or his/her designee.
- 1.10 Effective Date:** The date on which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.
- 1.11 Key Personnel:** The personnel named in Section 4.6.
- 1.12 Mandatory City Requirements:** Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.
- 1.13 Notice To Proceed (NTP):** A letter or email from the Project Manager notifying Contractor of the day when work is to commence under each Task Order,
- 1.14 Party(ies):** The City and Contractor, either collectively or individually.
- 1.15 Project Manager:** The designated SFMTA employee who will assume all duties and responsibilities to manage each Task Order.
- 1.16 Proposal:** The Contractor's written response to the RFP or a written request for a proposal for the performance of the Task Order, as the context requires.
- 1.17 Purchase Order:** A written order issued by the SFMTA to the Contractor, authorizing the start of work under each Task Order.
- 1.18 Request for Proposals (RFP):** The Request for Proposals for As-Needed Public Outreach and Engagement Services issued by the SFMTA on July 29, 2016.
- 1.19 San Francisco Municipal Transportation Agency (SFMTA):** The agency of the City with jurisdiction over surface transportation in San Francisco, as provided in the San Francisco Charter Article VIII.A.
- 1.20 Services:** The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, and further described

by the Task Order, including all services, labor, supervision, materials, equipment, actions, and other requirements to be performed and furnished by Contractor under this Agreement.

**1.21 Subcontractor:** Any firm under contract to Contractor for services under this Agreement.

**1.22 Task Order:** A written directive from the SFMTA to Contractor to perform specified Services under this Agreement.

## **Article 2 Term of the Agreement**

2.1 The term of this Agreement shall commence on the latter of: (i) April 4, 2017 or (ii) the Effective Date, and shall expire on April 4, 2019, unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **Article 3 Financial Matters**

**3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability, or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised



amount and the Parties having modified this Agreement as provided in Section 11.5, “Modification of this Agreement.”

### **3.3 Compensation.**

**3.3.1 Payment Amount.** Contractor’s compensation for the Services shall be based on either: (1) a negotiated lump-sum price per task or Deliverable (which includes all direct and indirect costs, wages and benefits, overhead, profit, and all other costs) for each Task Order; or (2) a negotiated number of hours per task or Deliverable using the hourly rates set forth in Appendix B plus a fixed contractor fee, and subject to a total amount not to exceed. In no event shall the total amount of this Agreement for all Task Orders exceed two million five hundred thousand dollars (\$2,500,000).

**3.3.2 Method of Computing Hourly Compensation.** For Services paid for on an hourly basis, the SFMTA shall pay Contractor the applicable hourly rates in Appendix B, “Calculation of Charges” plus a fixed contractor fee, the sum of which equals the fully burdened hourly rates. The hourly rate shall be the sum of the applicable unburdened hourly rate and overhead rate shown in Appendix B. The fixed contractor fee shall cover profit, non-compensable overhead, and other operating costs. Contractor’s mark-up for managing Subcontractors shall be no more than 5% of the fully burdened hourly rate.

(a) **Unburdened Hourly Rates.** The unburdened hourly rates (i.e., gross wages or salaries paid to personnel that perform the Services) shown in Appendix B shall be fixed until 24 months after the Effective Date, and may be adjusted thereafter only if the City chooses to exercise its option to extend the term of the Agreement. Any adjustment to the hourly rates in Appendix B shall be negotiated by the Parties, except that no adjustment shall exceed the corresponding annual increase in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for All Urban Consumers. No hourly rate shall be adjusted without prior written approval of the SFMTA.

(b) **Overhead Rates.** The overhead rates shown for Contractor and each Subcontractor in Appendix B are estimates of actual overhead rates and may be adjusted after 24 months with prior written approval from the Director of Transportation. Contractor’s and Subcontractors’ combined unburdened hourly rates and overhead rates are subject to audit in compliance with Federal requirements.

(c) **Out-of-Pocket Expenses.** The SFMTA shall reimburse Contractor for Contractor’s and Subcontractors’ actual costs of approved out-of-pocket expenses. Compensation for materials and other approved out-of-pocket expenses, other than travel, shall be at direct cost, plus a mark-up not to exceed 5%. Compensation for travel-related expenses shall be at direct cost without mark-up. The mark-up for media buys shall not exceed 7%. The mark-up for media buys shall be applied by either the Contractor or Subcontractor, whichever is making the purchase, and shall not be combined with the 5% mark-up for other

approved out-of-pocket expenses. All out-of-pocket expenses must be pre-approved in writing by the Project Manager. For travel expenses, airfare must be coach class only and reasonable; reservations must be made in a timely fashion to receive the lowest rate possible. Vehicle expenses for travel will only be reimbursed if the travel is outside of a 100-mile radius of the City. Payment for travel related costs shall not exceed U.S. General Services Administration (GSA) per diem and mileage rates. Legible receipts for all expenses, including travel, must accompany the invoice, or City reserves the right to refuse reimbursement of expenses until receipts are provided.

**(d) Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile, and telecommunication expenses shall not be tracked or reimbursed separately as out-of-pocket costs. Contractor and Subcontractor personnel relocation costs and entertainment or personal expenses shall not be reimbursable under this Agreement. Office and field supplies/equipment expenses shall not be reimbursed unless Contractor demonstrates these supplies and equipment are out of the ordinary, necessary, and used exclusively to provide the Services. If the SFMTA determines that office and field supplies/equipment expenses out of the ordinary, necessary, and used exclusively to provide the Services, such expenses must be pre-approved in writing by the Project Manager. Vehicle expenses for travel within a 100-mile radius of the City will not be reimbursable.

**(e) Use of Public Transportation.** The City has a transit-first policy, and the SFMTA encourages Contractor and Subcontractors to use public transit in performance of the Services to the maximum extent possible. The SFMTA will closely review Contractor's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Taxicabs and hired cars are not considered public transit. The SFMTA reserves the right to refuse to reimburse travel expenses that are not in accordance with these policies.

**3.4 Payment.** Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Each Task Order shall include a schedule for payment of each task or Deliverable as agreed to by the Project Manager and Contractor. The schedule for payment shall clearly state when payment shall be made as either a one-time lump sum upon completion, or as a percentage or dollar amount per unit each month as defined in the Task Order. Under special circumstances, and upon pre-approval by the Project Manager, compensation may be made on a time and materials basis. Such compensation shall be clearly documented in the Task Order as the schedule of payment. Project Manager shall be responsible for monitoring the Services performed by Contractor and appropriateness of the monthly invoice amount(s). Compensation shall be made for Services identified in the invoice that the Project Manager, or SFMTA's designee, in his or her sole discretion, concludes have been satisfactorily performed. The SFMTA pay Contractor within 30 calendar days of receipt of the invoice, unless

the SFMTA notifies Contractor that a dispute as to the invoice exists. In no event shall City be liable for interest or late charges for any late payments.

**3.4.1 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials, and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

**3.4.2 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of the City's withholding of payments as provided herein.

**3.4.3 Invoice Format.** Invoices furnished by Contractor under this Agreement shall be in a form acceptable to the Controller and City, and shall include a unique invoice number. Contractor shall submit invoices for all allowable charges incurred in the performance of each Task Order. Contractor shall submit no more than one invoice in a month for each Task Order, and each invoice shall contain the following information:

- a. Contract number;
- b. Task Order number;
- c. Description of the work performed or Services rendered;
- d. Name, position, fully burdened hourly billing rate as set forth in Appendix B, dates and hours worked of employee(s) whose labor is invoiced;
- e. Other direct costs/out-of-pocket expenses itemized and with receipts showing the corresponding order of itemization;
- f. Subcontractor costs supported by invoice itemization in the same format as described above;
- g. Total costs;
- h. Completed SFMTA Task Order Invoice Cover Sheet; and
- (i) Payroll records substantiating all labor charges for Contractor and all Subcontractors shown on the invoice.

**3.4.4 LBE Payment.** Contractor must submit all required CMD payment forms to enable CCO to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the LBE Ordinance. The

Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment forms. Failure to submit all required CMD payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required CMD payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a CMD Form 9 Payment Affidavit verifying its payments to LBE subcontractors.

### **3.4.5 Getting Paid for Goods and/or Services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative; (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company; (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor); and (iv) the company's bank account information, including routing and account numbers.

### **3.5 Reserved (Grant-Funded Contracts)**

**3.6 Audit and Inspection of Records.** Contractor shall maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Services. Contractor shall permit the City to audit, examine, and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records, or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this subsection. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.7 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false

claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A, “Scope of Services.” Officers and employees of the City are not authorized to request, and the City is not required to reimburse Contractor for, services performed beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, “Modification of this Agreement.” Contractor shall provide high quality Deliverables that shall require minimal revisions by SFMTA. Contractor shall adhere to the quality assurance guidelines set forth in Appendix C, “SFMTA Contractor Checklist for Document Submittals,” and respond fully and promptly to requests for revisions to initial Submittals from the City in order to finalize documents.

**4.2 Priority of Documents.** All requirements of the RFP and the representations made in the Proposal that are not in conflict with provisions of this Agreement are incorporated by reference and made an integral part of this Agreement as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or the Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP or Proposal shall control. In case of conflict between the RFP and the Contractor’s Proposal, the RFP shall govern. Documents listed as Appendices to this Agreement are incorporated by reference as though fully set forth herein.

**4.3 Information and Data.** Contractor shall request in writing any information and data it requires to prepare proposals for or perform the Services described in each Task Order. Contractor shall identify the timing and priority in which this information and data will be required. The Parties shall reach agreement as to the availability and delivery time for this data and information during the proposal phase for each Task Order.

**4.4 Presentations.** If requested by City, Contractor shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.

**4.5 Task Order Requirements.** The SFMTA will define the requirements of each Task Order. The Parties will agree on the scope of services, cost, and estimated time to perform each Task Order before Contractor starts work on the Task Order.

**4.5.1 Scope of Services.** The SFMTA will prepare the scope of Services and expected time of completion for each Task Order, and send the scope of Services to Contractor with a written request for a proposal for the performance of the Task Order.

**4.5.2 Contractor Proposal.** Contractor shall prepare and submit a proposal for each Task Order showing:

(a) A work plan that includes a detailed description by task of the Services to be performed and the means and methods that will be used to perform them;

(b) A schedule by task and Deliverable, including key milestones and/or critical path Deliverables;

(c) A list of Contractor's personnel and Subcontractors (in accordance with Appendix B) assigned to each part of the Services, along with (1) a resume indicating why such personnel or Subcontractors are qualified to perform the Services, and (2) a narrative describing the prior experience of personnel and Subcontractors in performing work similar to the Services;

(d) A detailed cost estimate for each task or Deliverable showing:

(i) Estimated hours and hourly rates by position as listed in Appendix B for both Contractor and Subcontractor personnel. Labor hours for preparing monthly invoices or filling out required LBE forms will not be allowed; additional Subcontractor program management labor hours by Contractor will not be allowed. Overtime labor hours will not be allowed without prior written approval from the Project Manager. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

(ii) Estimated reasonable out-of-pocket expenses. Contractor may charge a fixed percentage mark-up for out-of-pocket expenses as set forth in section 3.3.2(d) of this Agreement. All expenses must be pre-approved in writing by the Project Manager;

**4.5.3 Negotiation of Cost.** The Project Manager will review the Proposal and negotiate for each Task Order either a lump-sum price per task or Deliverable, or number of hours per task or Deliverable, as described in Section 3.3.1.

**4.5.4 Record of Negotiations.** The Project Manager will document the negotiations and any agreement in a record of negotiations.

**4.5.5 Subcontracting Goals** Upon completion of negotiations for each Task Order, Contractor shall provide Project Manager a memo describing the proposed LBE goal associated with the Task Order. The memo shall include a table that lists: (1) all firms performing Services under the Task Order; (2) whether the firm is a LBE; (3) the dollar value

and percentage of work attributed with each firm; and (4) the overall calculated LBE goal for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's LBE goal memo, approve or deny the goal, and issue a memo to file by CMD. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in this Agreement. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall LBE goal set forth in the Agreement.

**4.5.6 Controller Certification.** The City will request certification from the Controller that adequate funds are available to proceed with the Task Order as agreed.

**4.5.7 Notice to Proceed.** After the certification of each Task Order, a Purchase Order will be issued by the City, and the Project Manager will send to the Contractor a written NTP and Task Order number. Contractor shall use the Task Order number and Purchase Order when submitting invoices to the City for payment. Contractor shall not commence work under any Task Order until it receives a corresponding Purchase Order and written NTP from the Project Manager.

**4.5.8 Changes.** Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of Services of the Task Order(s). If there is a material change in the scope of Services of a task, then a proposal, negotiations, and record of negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a Task Order.

**4.5.9 Failure to Agree on Terms of Task Order.** If the Parties do not reach agreement on the terms of any Task Order, the SFMTA may either cancel the Task Order and have the Services performed by other available sources, or direct Contractor to proceed with the Task Order under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances shall Contractor refuse to undertake a City-ordered task.

**4.6 Personnel and Key Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's SFMTA-approved Subcontractors) to perform the Services. Contractor shall comply with City's reasonable requests regarding assignment and removal of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the time set forth in the corresponding Task Order. Contractor agrees that the following personnel ("Key Personnel") shall be committed and assigned to provide services under this Agreement to the level required by SFMTA for the term of the Agreement and shall also be staffed at Contractor's local offices within the San Francisco Bay Area for all such time:

Davis & Associates Communications, Inc.:

Darolyn Davis

Rahel Marsie-Hazen

Kevin Perez-Allen  
Scott Wintner  
Steve Hawkins  
Cherilyn Tran  
Daniel Howell  
Vincent Mazzaferro  
Javierre Pruit-Hill  
Demian Rosenblatt  
Lora Tomova  
Perry Bleeker  
Carrie Souza  
Anthony Garcia  
Carla Mannix  
Matt Maltbie

CivicMakers:

Lawrence Grodeska  
Cristelle Blackford

Greenway Consulting:

Greg Greenway

Corey, Canapary & Galanis Research:

Joe Canapary  
Carol Anne Carroll  
Steven Kral

InterEthnica:

Lisa Abboud  
Deborah Oh

Contractor shall advise SFMTA immediately any time one of the Key Team Members deviates from its committed role or time on the Task Order (e.g., is assigned to another project). SFMTA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

**4.7 Current Workload and Available Resources.** Contractor covenants that its current workload and the workload of its Subcontractors will not affect the commencement and the progress of the Services performed under this Agreement. Contractor shall have all the



necessary professional, technical, and support personnel, including those of the Subcontractors', available, ready and mobilized to perform the Services within two weeks of the receipt of NTP on a particular Task Order. In addition, Contractor shall make good faith efforts to execute all applicable Subcontracts within three weeks of NTP. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

**4.8 Transmittal of Deliverables.** When requested by the Project Manager, and after completion of each Task Order or Deliverable, Contractor shall transmit to the SFMTA all work product (duplicates and originals) produced or accumulated in the course of its and its Subcontractors' work on this Agreement. The Contractor's project manager and Key Personnel shall have thoroughly reviewed and approved all work product and signed off as such prior to transmitting them to SFMTA.

**4.9 Reserved (Reproduction of Work Product).**

**4.10 SFMTA's Responsibilities Regarding Deliverables.** The SFMTA shall review and comment on Deliverables within 14 calendar days of receipt by SFMTA. The SFMTA and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the approved Task Order. The SFMTA's review and comments of Contractor submittals shall in no way relieve the Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the SFMTA relieve the Contractor of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

If Contractor considers certain SFMTA review comments or directives, either written or oral, to require work efforts not included in the approved Scope of Services for each Task Order, the Contractor shall provide SFMTA with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.8 above.

**4.11 Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes its approval of the Subcontractors listed below.

CivicMakers

Greenway Consulting

Corey, Canapary & Galanis Research

InterEthnica

Bang the Table

ACE Mailing

Slow Clap Production

#### **4.12 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

**4.12.1 Independent Contractor.** For the purposes of this Article 4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.12.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall

be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

**4.13 Assignment.** The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

**4.14 Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

**(d)** Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

**(e)** Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

**(j)** Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or personal information or other personally identifying information, stored or transmitted in electronic form;

**(ii)** Network security liability arising from the unauthorized access to, use of, or tampering with, computers or computer systems, including hacker attacks; and

**(iii)** Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

**(a)** Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

**(b)** That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties." All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

5.1.4 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims

made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.6 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.7 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and Subcontractors.

5.1.8 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents, and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, contractors and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT AMOUNT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

**6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

7.1 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Contractor acknowledges that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by SFMTA.

**(b)** Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

**(c)** At SFMTA's direction, assigning to SFMTA any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

**(d)** Subject to SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

**(e)** Completing performance of any Services that SFMTA designates to be completed prior to the date of termination specified by SFMTA.

**(f)** Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which SFMTA has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to SFMTA an invoice, which shall set forth each of the following as a separate line item:

**(a)** The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

**(b)** A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

**(c)** The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

**(d)** A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to SFMTA, and any other appropriate credits to SFMTA against the cost of the Services or other work.

8.1.4 In no event shall SFMTA be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or



unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, SFMTA may deduct: (i) all payments previously made by SFMTA for Services covered by Contractor's final invoice; (ii) any claim which SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 SFMTA's payment obligation under this Section shall survive termination of this Agreement.

## **8.2 Termination for Default; Remedies.**

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

|           |   |
|-----------|---|
| 3.7       | Submitting False Claims.  |
| 4.13      | Assignment  |
| Article 5 | Insurance and Indemnity   |
| Article 7 | Payment of Taxes  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 10.10     | Alcohol and Drug-Free Workplace                                   |
| 11.10     | Compliance with Laws  |

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any

substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

**8.3 Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

|       |  |
|-------|--|
| 3.4.1 | Payment Limited to Satisfactory Services |
| 3.6   | Audit and Inspection of Records          |

|           |   |
|-----------|---|
| 3.7       | Submitting False Claims   |
| Article 5 | Insurance and Indemnity   |
| 6.1       | Liability of City   |
| 6.3       | Liability for Incidental and Consequential Damages                |
| Article 7 | Payment of Taxes  |
| 8.1.6     | Payment Obligation  |
| 9.1       | Ownership of Results  |
| 9.2       | Works for Hire  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 11.6      | Dispute Resolution Procedure                                      |
| 11.7      | Agreement Made in California; Venue                               |
| 11.8      | Construction  |
| 11.9      | Entire Agreement  |
| 11.10     | Compliance with Laws  |
| 11.11     | Severability  |

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

## **Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any

documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [www.sfgov.org](http://www.sfgov.org) under "Government."

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

### **10.4 Nondisclosure of Private, Proprietary or Confidential Information.**

10.4.1 If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

10.4.2 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

### **10.5 Nondiscrimination Requirements**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall

incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 30% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor’s LBE subcontracting commitments.

**10.7 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

**10.9 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed

from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to: (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves; (2) a candidate for the office held by such individual; or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**10.12 Reserved. (Slavery Era Disclosure)**

**10.13 Reserved. (Working with Minors)**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions**

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor’s obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of

this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Reserved. (Public Access to Nonprofit Records and Meetings)**

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)**

**10.18 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**10.19 Reserved. (Preservative Treated Wood Products)**

**Article 11 General Provisions**

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Deanna Desedas  
Marketing and Communications Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
[Deanna.desedas@sfmta.com](mailto:Deanna.desedas@sfmta.com)

OR

Amber Vasché  
Sustainable Streets Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
[Amber.vasche@sfmta.com](mailto:Amber.vasche@sfmta.com)

To Contractor: Darolyn Davis  
Principal in Charge  
Davis & Associates Communications, Inc.  
1388 Sutter Street, Suite 1200

San Francisco, CA 94109  
[darolyn@davis-pr.com](mailto:darolyn@davis-pr.com)

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

**11.2 Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

**11.3 Reserved. (Payment Card Industry (PCI) Requirements)**

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement, or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of



the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.9 Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated September 14, 2016. The RFP and Contractor's proposal

are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

## **Article 12 MacBride Principles And Signature**

**12.1 MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

## **Article 13 Large Vehicle Driver Safety Training Requirements**

13.1 Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

13.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

|  |  |
|--|--|
| <p><b>CITY</b></p> <p><b>San Francisco<br/>Municipal Transportation Agency</b></p> <hr/> <p>Edward D. Reiskin<br/>Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of<br/>Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____<br/>Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera<br/>City Attorney</p> <p>By: _____<br/>Isidro A. Jiménez<br/>Deputy City Attorney</p> | <p><b>CONTRACTOR</b></p> <p><b>Davis &amp; Associates Communications, Inc.</b></p> <hr/> <p>Darolyn Davis<br/>Principal in Charge<br/>1388 Sutter Street, Suite 1200<br/>San Francisco, CA 94109</p> <p><u>Acknowledgement of Large Vehicle Driver<br/>Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor<br/>acknowledges that it has read and understands<br/>Article 13: Large Vehicle Driver Safety<br/>Training Requirements.</p> <p>City vendor number: <b>60634</b></p> |
|--|--|

**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- C: Contractor Checklist for Document Submittals

## **Appendix A Scope of Services**

### **I. Policy Context**

Contractor shall use the SFMTA's Public Outreach and Engagement Team Strategy (POETS) as guidance in preparing strategies, engagements, and Deliverables that are consistent with the SFMTA's standards below. All Task Orders are in place to help ensure the Project Managers meet the needs of community stakeholders while supporting the SFMTA's key policies, including but not limited to:

- a. SFMTA FY 2013-18 Strategic Plan:  
<https://www.sfmta.com/sites/default/files/pdfs/FY%202013%20-%20FY%202018%20SFMTA%20Strategic%20Plan.pdf>
- b. Transit First Policy (SF Charter, Article VIIA, SEC. 8A.115):  
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- c. POETS
- d. SFMTA Brand Standards
- e. Complete Streets Policy (SF Public Works Code, Article II, SEC. 2.4.13):  
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- f. Vision Zero Goal: <http://visionzerosf.org/>
- g. Better Streets Plan: <http://www.sfbetterstreets.org/>
- h. Bicycle Strategy:  
[https://www.sfmta.com/sites/default/files/BicycleStrategyFinal\\_0.pdf](https://www.sfmta.com/sites/default/files/BicycleStrategyFinal_0.pdf)
- i. Pedestrian Strategy: <http://archives.sfmta.com/cms/rpedmast/documents/1-29-13PedestrianStrategy.pdf>
- j. Walk First Program: <http://walkfirst.sfplanning.org/>

### **II. Scope of Services**

#### **A. General Description of Services**

Contractor will generally support SFMTA project teams with planning, crafting, and delivering best practices, and culturally competent outreach and engagement with stakeholder communities and the public at-large. Depending on the needs of the SFMTA and project team, a Task Order may include a request for comprehensive services for a project – from strategy/planning to execution and evaluation – or be limited to specific services or phases of the project.

## B. Specific Tasks

Specific Services may include, but are not limited to, the following tasks:

### 1) Planning for Public Outreach and Engagement

- a) Create effective public participation plans that account for project requirements, funding needs, and other related SFMTA projects. Contractor shall work with Project Managers to develop all necessary planning as outlined by POETS for the assigned project. Plans must be consistent with the POETS and utilize industry best practices in public participation, such as those developed by the International Association for Public Participation (IAP2).
- b) Develop communications assessments that consider, but are not limited to, the following elements:
  - i) Project objectives, goals, and requirements
  - ii) Key stakeholders and project impacts by stakeholder
  - iii) Communications and outreach priorities
  - iv) Effectiveness metrics and methods of evaluation
  - v) Timelines for outreach in coordination with project planning, environmental clearance, design, construction, and evaluation stages, as well as public hearings, SFMTA Board meetings, scoping hearings, or other required Federal, State, or local approvals.
- c) Develop outreach and communication plans that support project goals and objectives for public participation plans.
  - i) Create a comprehensive communications and outreach strategy that engages diverse stakeholders (including people left out of primary stakeholder groups, such as merchant and neighborhood associations), other affected parties and the public-at-large.
  - ii) Outline communications and outreach tactics through key project phases.
  - iii) Identify opportunities for early outreach and engagement.
  - iv) Develop a toolkit of customized approaches to engage stakeholders on the project.
  - v) Compile a customized stakeholder contact list.
  - vi) Outline key messages.
  - vii) Identify coaching and training needs for Project Manager and staff, including media training, active listening, facilitation, and mediation, negotiations, and handling difficult people and situations.

## 2) Implementation of Public Outreach and Engagement

- a) Assist with the implementation of outreach meetings
  - i) Schedule and reserve venues and provide logistical support for outreach meetings, inter- and intra-agency meetings, briefings, outreach at standing community events, tours, and site visits, including transportation access, presentation set-up, sign-in, materials production, and other duties as assigned.
  - ii) Ensure broad awareness among relevant audiences of scheduling and content for stakeholder and outreach meetings.
  - iii) Develop presentations (e.g., PowerPoint) and presentation boards for meetings.
  - iv) Provide meeting facilitation.
  - v) Record meeting minutes, transcribe audio visual recordings, and draft meeting debriefs.
  - vi) Track meeting attendance.
  
- b) Collect and manage stakeholder engagement and feedback
  - i) Conduct and facilitate formal and informal focus groups.
  - ii) Design and administer surveys using different formats, including online, phone, intercept, and in-person interviews.
  - iii) Hold design charrettes.
  - iv) Solicit on-site, in-person feedback.
  - v) Conduct balloting or other voting mechanisms.
  - vi) Set up and monitor hotlines, including working with 311 staff to triage project-related calls; create new hotlines, as appropriate.
  - vii) Aggregate feedback to allow for detailed reporting and trend analysis.
  - viii) Prepare detailed outreach history summaries in preparation for legislative action or completion of project community phase, including:
    - (1) Reports documenting all public engagement activities
    - (2) Photographs from engagement events
    - (3) Compilation of main engagement themes (as described above)
    - (4) Counts and analysis of the number of individuals and stakeholder groups participating
  - ix) Identify and procure specific collection and measurement tools, as needed.
  
- c) Maintain stakeholder contacts and correspondence
  - i) Monitor, track and provide follow-up responses to constituent correspondence.
  - ii) Manage stakeholder concerns about scheduling meetings, logistics, and notification protocol.
  - iii) Update and maintain project stakeholder contact database, including constituents who are on- and offline.

- iv) Develop expanded stakeholder mailing lists for mailings and email blasts to reach a broad public audience.
- 3) Design and Development of Communications Materials
- a) Collateral Materials
    - i) Following the SFMTA’s brand standards, write and design culturally relevant project collateral materials, such as fact sheets, mailers, reports, and presentation decks, and templates using maps, infographics, diagrams, renderings, illustrations, and photographs.
    - ii) Translate materials for non-English language speakers on request.
    - iii) Ensure collateral formats are compliant with ADA accessibility standards.
  - b) Digital Assets
    - i) Assist in development and implementation of digital communications to support web pages, emails, blogs, and social media.
    - ii) Draft project information for websites and for social media.
    - iii) Ensure digital assets are compliant with ADA accessibility standards.
    - iv) Provide social media monitoring services.
  - c) Video Production
    - i) Write, produce and edit videos that increase public understanding of project.
    - ii) Develop public dissemination plan for videos.
    - iii) Translate videos for non-English language speakers on request.
  - d) Miscellaneous Items
    - i) Develop customized give-away materials (i.e., “swag”) that support public interest and engagement.
    - ii) Procure miscellaneous materials and supplies for meetings and presentations.

**Appendix B  
Calculation of Charges**

Per Section 3.3.2, in addition to the rates shown below, Contractor may charge City a 5% markup on Subcontractor labor. Contractor shall itemize the markup in every invoice.

| Position   | Unburdened Hourly Rate | Overhead Rate | Fixed Contractor Fee | Fully Burdened Hourly Rate |
|--|------------------------|---------------|----------------------|----------------------------|
| <b>D&amp;A - Prime Firm</b>                        |                        |               |                      |                            |
| Principal in Charge or Project Director            | \$85.00                | 135%          | 10%                  | \$220                      |
| Senior Project Planning Manager                    | \$65.64                | 135%          | 10%                  | \$170                      |
| Senior Account Executive                           | \$71.43                | 135%          | 10%                  | \$185                      |
| Senior Project Planning and Communications Manager | \$65.64                | 135%          | 10%                  | \$170                      |
| Media Relations and Facilitation Specialist        | \$65.64                | 135%          | 10%                  | \$170                      |
| Communications and Public Engagement Specialist    | \$61.90                | 135%          | 10%                  | \$160                      |
| Communications and Public Engagement Specialist    | \$61.78                | 135%          | 10%                  | \$160                      |
| Senior Communications Manager                      | \$65.76                | 135%          | 10%                  | \$170                      |
| Community Engagement Specialist                    | \$55.98                | 135%          | 10%                  | \$145                      |
| Branding and Marketing Director                    | \$71.43                | 135%          | 10%                  | \$185                      |
| Senior Graphic Designer                            | \$59.85                | 135%          | 10%                  | \$155                      |
| Website and Creative Manager                       | \$65.76                | 135%          | 10%                  | \$170                      |
| Media Buyer  | \$58.00                | 135%          | 10%                  | \$150                      |
| Online Engagement Manager                          | \$61.78                | 135%          | 10%                  | \$160                      |
| Communications Associate                           | \$52.12                | 135%          | 10%                  | \$135                      |
| <b>CivicMakers - Sub Firm</b>                      |                        |               |                      |                            |
| IAP2 Facilitation Specialist                       | \$65.00                | 82%           | 10%                  | \$130                      |
| IAP2 Outreach Specialist                           | \$57.50                | 82%           | 10%                  | \$115                      |



| <b>Position</b>  | <b>Unburdened Hourly Rate</b> | <b>Overhead Rate</b> | <b>Fixed Contractor Fee</b> | <b>Fully Burdened Hourly Rate</b> |
|--|-------------------------------|----------------------|-----------------------------|-----------------------------------|
| <b>Greenway Consulting - Sub Firm</b>                    |                               |                      |                             |                                   |
| Public Engagement, Planning & Facilitation Specialist    | \$45.00                       | 152%                 | 10%                         | \$125                             |
| *Plus pre-approved travel expenses                       |                               |                      |                             |                                   |
| <b>Corey, Canapary &amp; Galanis Research - Sub Firm</b> |                               |                      |                             |                                   |
| Senior Opinion and Market Research Analyst               | \$42.50                       | 105%                 | 2.93%                       | \$89.68                           |
| Opinion and Market Research Analyst                      | \$28.50                       | 105%                 | 2.93%                       | \$60.14                           |
| Opinion and Market Research Analyst Associate            | \$21.00                       | 105%                 | 2.93%                       | \$44.31                           |
| <b>InterEthnica - Sub Firm</b>                           |                               |                      |                             |                                   |
| Principal/Cultural Consultant                            | \$73.71                       | 85%                  | 10%                         | \$150                             |
| Account Manager  | \$61.43                       | 85%                  | 10%                         | \$125                             |
| Project Manager  | \$61.43                       | 85%                  | 10%                         | \$125                             |
| Graphic Designer   | \$61.43                       | 85%                  | 10%                         | \$125                             |
| Illustrator  | \$50.00                       | 85%                  | 10%                         | \$102                             |
| Typesetter   | \$46.68                       | 85%                  | 10%                         | \$95                              |
| Outreach Staff   | \$36.86                       | 85%                  | 10%                         | \$75                              |
| Outreach Lead  | \$46.68                       | 85%                  | 10%                         | \$95                              |
| Translator   | \$50.00                       | 85%                  | 10%                         | \$102                             |
| Editor   | \$50.00                       | 85%                  | 10%                         | \$102                             |
| Senior Interpreter                                       | \$90.90                       | 85%                  | 10%                         | \$185                             |
| Interpreter  | \$85.00                       | 85%                  | 10%                         | \$173                             |
| Researcher   | \$73.71                       | 85%                  | 10%                         | \$150                             |
| Assistant Researcher                                     | \$46.68                       | 85%                  | 10%                         | \$95                              |
| Intern   | \$25.00                       | 85%                  | 10%                         | \$51                              |
| Meeting Assistants                                       | \$25.00                       | 85%                  | 10%                         | \$51                              |
| Copywriter   | \$65.00                       | 85%                  | 10%                         | \$132                             |
| Photographer   | \$90.00                       | 85%                  | 10%                         | \$183                             |
| Sound Technician   | \$75.00                       | 85%                  | 10%                         | \$153                             |
| Voice over Talent  | \$61.43                       | 85%                  | 10%                         | \$125                             |
| Administration   | \$37.50                       | 85%                  | 10%                         | \$76                              |

| <b>Position</b>  | <b>Unburdened Hourly Rate</b> | <b>Overhead Rate</b> | <b>Fixed Contractor Fee</b> | <b>Fully Burdened Hourly Rate</b> |
|--|-------------------------------|----------------------|-----------------------------|-----------------------------------|
| <b>InterEthnica - Sub Firm<br/>Audio Translation Equipment</b>   |                               |                      |                             |                                   |
| Headset  |                               |                      |                             | \$18 per head set                 |
| Translation Transmitter  |                               |                      |                             | \$125 per day                     |
| Delivery, set-up and equipment test  |                               |                      |                             | \$125 per event                   |
| On site audio technician available   |                               |                      |                             | \$125 per hour                    |
| <b>InterEthnica - Sub Firm<br/>Translation Rates</b>   |                               |                      |                             |                                   |
| *Translation minimum charge of \$125 per language. This applies to documents that contain a word count of 200 or less. |                               |                      |                             |                                   |
| *The exception to this rule is advertising and slogan translation, which is charged at an hourly rate of \$125.        |                               |                      |                             |                                   |
| *Translation rates are \$0.27 - \$0.40 per word depending on the language and the complexity of the source text.       |                               |                      |                             |                                   |
| Spanish  |                               |                      |                             | \$0.27 per word                   |
| Hmong  |                               |                      |                             | \$0.32 per word                   |
| Arabic   |                               |                      |                             | \$0.30 per word                   |
| Russian  |                               |                      |                             | \$0.32 per word                   |
| Chinese - Mandarin and Cantonese   |                               |                      |                             | \$0.30 per word                   |
| Vietnamese   |                               |                      |                             | \$0.32 per word                   |
| Tagalog  |                               |                      |                             | \$0.35 per word                   |
| Japanese   |                               |                      |                             | \$0.32 per word                   |
| Korean   |                               |                      |                             | \$0.32 per word                   |
| Punjabi  |                               |                      |                             | \$0.32 per word                   |
| <b>OTHER SUBS</b>  |                               |                      |                             |                                   |
| **The following subs do not have an hourly billing rate. They bill per project / license contract.                     |                               |                      |                             |                                   |
| Bang the Table   |                               |                      |                             |                                   |
| ACE Mailing  |                               |                      |                             |                                   |
| Slow Clap Production   |                               |                      |                             |                                   |

**Appendix C**  
**Contractor Checklist for Document Submittals**

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)**

Task Order Number: \_\_\_\_\_

Task Order Title: \_\_\_\_\_

This checklist must be filled in by the contractor and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

1. Document is edited for grammatical and typographical errors, clarity, and format.
2. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
3. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
4. All document sections, tables, figures, appendices, etc. are submitted.
5. Footnotes are on same page as the reference (no endnotes).
6. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
7. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
8. Data in tables and figures are cross-checked with text.
9. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
10. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
11. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
12. All document background reports are finalized and included with the submittal packet.
13. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Contractor at the Task Order level:
  - a. Date / Times;

- b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
- c. Name and contact information of contractor performing the count effort;
- d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
  - i. For Machine Counts: Street Name\_Direction of Approach\_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)
  - ii. For Turning Movement Counts by Hand: Street Name\_Cross Street\_Time of Day (i.e., LAGUNA CLAY PM);
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
- f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
- g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

**Notes:**

Firm Name: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Circlepoint**

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**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Circlepoint  
Contract No. SFMTA2016-39/2 (FHWA)**

This Agreement is made this 18th day of April, 2017, in the City and County of San Francisco, State of California, by and between Circlepoint, 1814 Franklin St, Suite 1000, Oakland, CA (Contractor) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

A. The SFMTA wishes to contract with a qualified public relations firm for public outreach and engagement services to be provided on an as-needed basis.

B. The SFMTA issued a Request for Proposals (RFP) on July 29, 2016 and selected Contractor as the highest qualified scorer pursuant to the RFP.

C. The Disadvantage Business Enterprise (DBE) subcontracting participation requirement for this Agreement is 35 percent.

D. There is no Local Business Entity (LBE) subcontracting participation requirement for this Agreement.

E. Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.

F. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 41409-15/16 on 01/04/2016.

Now, THEREFORE, the Parties agree as follows:

**Article 1 Definitions**

The following definitions apply to this Agreement:

**1.1 Agreement:** This contract document and all referenced appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference.

**1.2 Award:** Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute this Agreement.

- 1.3 CCO:** The Contract Compliance Office of the SFMTA.
- 1.4 City:** The City and County of San Francisco, a municipal corporation, acting by and through the SFMTA.
- 1.5 CMD:** The Contract Monitoring Division of the City.
- 1.6 Contractor:** Circlepoint
- 1.7 Days:** Unless otherwise designated, the word “Days” refers to working days of the City, which are generally Monday through Friday, excluding holidays. The use of the term “days,” “working days” or “business days” in this Agreement shall be synonymous.
- 1.8 Deliverables:** Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.
- 1.9 Director:** The Director of Transportation of the SFMTA or his/her designee.
- 1.10 Disadvantaged Business Enterprise or DBE:** A for-profit, small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- 1.11 Effective Date:** The date on which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.
- 1.12 Federal Highway Administration (FHWA):** An operating administration of the U.S. Department of Transportation (DOT).
- 1.13 Key Personnel:** The personnel named in Section 4.6.
- 1.14 Mandatory City Requirements:** Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.
- 1.15 Notice To Proceed (NTP):** A letter or email from the Project Manager notifying Contractor of the day when work is to commence under each Task Order.
- 1.16 Party(ies):** The City and Contractor, either collectively or individually.
- 1.17 Project Manager:** The designated SFMTA employee who will assume all duties and responsibilities to manage each Task Order.
- 1.18 Proposal:** The Contractor's written response to the RFP or a written request for a proposal for the performance of a Task Order, as the context requires.
- 1.19 Purchase Order:** A written order issued by the SFMTA to the Contractor, authorizing the start of work under each Task Order.

**1.20 Request for Proposals (RFP):** The Request for Proposals for As-Needed Public Outreach and Engagement Services issued by the SFMTA on July 29, 2016.

**1.21 San Francisco Municipal Railway (Muni):** The public transit system of San Francisco, under the jurisdiction of the SFMTA.

**1.22 San Francisco Municipal Transportation Agency (SFMTA):** The agency of the City with jurisdiction over surface transportation in San Francisco, as provided in the San Francisco Charter Article VIII A.

**1.23 Services:** The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, and further delineated by the Task Order, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

**1.24 Subcontractor:** Any firm under contract to the Contractor for services under this Agreement.

**1.25 Task Order:** A written directive from the SFMTA to Contractor to perform specified Services under this Agreement.

## **Article 2 Term of the Agreement**

2.1 The term of this Agreement shall commence on the latter of: (i) April 18, 2017 or (ii) the Effective Date and shall expire on April 18, 2019, unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **Article 3 Financial Matters**

**3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

**3.3 Compensation.**

**3.3.1 Payment Amount.** Contractor's compensation for the Services shall be based on either: (1) a negotiated lump-sum price per task or Deliverable (which includes all direct and indirect costs, wages and benefits, overhead, profit, and all other costs) for each Task Order; or (2) a negotiated number of hours per task or Deliverable using the hourly rates set forth in Appendix B (Calculation of Charges) plus a fixed contractor fee, and subject to a total amount not to exceed. In no event shall the total amount of this Agreement for all Task Orders exceed five hundred thousand dollars (\$500,000).

**3.3.2 Method of Computing Hourly Compensation** For Services paid for on an hourly basis, the SFMTA shall pay Contractor the applicable hourly rates plus fixed contractor fees, the sum of which equals the fully burdened hourly rates. The hourly rate shall be the sum of the applicable unburdened hourly rate and overhead rate shown in Appendix B. The fixed contractor fee shall cover profit, non-compensable overhead, and other operating costs; the Parties shall negotiate the fixed contractor fee on a Task Order basis, subject to the cap for each fixed contractor fee set forth in Appendix B. In cases where Contractor or a Subcontractor are DBEs or sole proprietors without audited hourly rates, the Parties have negotiated the flat fully burdened hourly rates, inclusive of profit, non-compensable overhead, and other operating costs, set forth in Appendix B. Contractor's mark-up for managing Subcontractors shall be no more than 5% of the fully burdened hourly rate.

**(a) Unburdened Hourly Rates.** The unburdened hourly rates (i.e., gross wages or salaries paid to personnel that perform the Services) shown in Appendix B shall be fixed until 24 months after the Effective Date, and may be adjusted thereafter only if the City exercises its option to extend the term of the Agreement. Any adjustment to the hourly rates in Appendix B shall be negotiated by the Parties, except that no adjustment shall exceed the corresponding annual increase in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for All Urban Consumers. No hourly rate shall be adjusted without prior written approval of the SFMTA.

**(b) Overhead Rates .** The overhead rates shown for Contractor and each Subcontractor in Appendix B are estimates of actual overhead rates and may be adjusted after 24 months with prior written approval from the Director of Transportation. Contractor's and Subcontractors' combined unburdened hourly rates and overhead rates are subject to audit in compliance with Federal requirements.

The overhead rates attached as Appendix B, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within 180 days of the end of Contractor's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Contractor shall submit to the Project Manager Contractor's and all Subcontractors' actual rates during the term of this Agreement. For each rate paid to the Contractor that exceeds the Contractor's or any Subcontractor's actual rate, the Contractor shall reimburse to the City the total difference between the rate paid and Contractor's or Subcontractor's actual rate during the term of this Agreement. Contractor shall reimburse City within 30 days of written notice from City seeking reimbursement. For each actual overhead rate of Contractor or Subcontractor that exceeds the rate paid to Contractor, City shall pay to Contractor the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Contractor within 60 days of City's receipt of all of Contractor's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Contractor's rates as provided above.

**(c) Reimbursable Costs.** This Agreement is subject to federal regulations concerning the reimbursement and audit of expenses, costs and overhead as set in the regulation "Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards," at in 2 CFR Part 200 et seq. ("Federal Cost Requirements") The Contractor acknowledges that it is familiar with the Federal Cost Requirements. Contractor shall not seek reimbursement and the City shall not pay reimbursement to Contractor for costs (including but not limited to direct costs, indirect costs, and overhead) that are not compensable under the Federal Cost Requirements. Contractor understands and acknowledges that the City shall not reimburse Contractor for Contractor's costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments to Contractor under this Agreement are subject to audit and adjustment in accordance with the requirements and standards set out in the Federal Cost Requirements.

**(d) Out-of-Pocket Expenses.** The SFMTA shall reimburse Contractor for Contractor's and Subcontractors' actual costs of approved out-of-pocket expenses. Compensation for materials and other approved out-of-pocket expenses, other than travel, shall be at direct cost, plus a mark-up not to exceed 5%. Compensation for travel-related expenses shall be at direct cost without mark-up. The mark-up for media buys shall not exceed 7%. The mark-up for media buys shall be applied by either the Contractor or Subcontractor, whichever is making the purchase, and shall not be combined with the 5% mark-up for other approved out-of-

pocket expenses. All out-of-pocket expenses must be pre-approved in writing by the Project Manager. For travel expenses, airfare must be coach class only and reasonable; reservations must be made in a timely fashion to receive the lowest rate possible. Vehicle expenses for travel will only be reimbursed if the travel is outside of a 100-mile radius of the City. Payment for travel related costs shall not exceed U.S. General Services Administration (GSA) per diem and mileage rates. Legible receipts for all expenses, including travel, must accompany the invoice, or City reserves the right to refuse reimbursement of expenses until receipts are provided.

(e) **Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile, and telecommunication expenses shall not be tracked or reimbursed separately as out-of-pocket costs. Contractor and Subcontractor personnel relocation costs and entertainment or personal expenses shall not be reimbursable under this Agreement. Office and field supplies/equipment expenses shall not be reimbursed unless Contractor demonstrates these supplies and equipment are out of the ordinary, necessary, and used exclusively to provide the Services. If the SFMTA determines that office and field supplies/equipment expenses out of the ordinary, necessary, and used exclusively to provide the Services, such expenses must be pre-approved in writing by the Project Manager. Vehicle expenses for travel within a 100-mile radius of the City will not be reimbursable.

(f) **Use of Public Transportation.** The City has a transit-first policy, and the SFMTA encourages Contractor and Subcontractors to use public transit in performance of the Services to the maximum extent possible. The SFMTA will closely review Contractor's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Taxicabs and hired cars are not considered public transit. The SFMTA reserves the right to refuse to reimburse travel expenses that are not in accordance with these policies.

**3.4 Payment.** Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Each Task Order shall include a schedule for payment of each task or Deliverable as agreed to by the Project Manager and Contractor. The schedule for payment shall clearly state when payment shall be made as either a one-time lump sum upon completion, or as a percentage or dollar amount per unit each month as defined in the Task Order. Under special circumstances, and upon pre-approval by the Project Manager, compensation may be made on a time and materials basis. Such compensation shall be clearly documented in the Task Order as the schedule of payment. Project Manager shall be responsible for monitoring the Services performed by Contractor and appropriateness of the monthly invoice amount(s). Compensation shall be made for Services identified in the invoice that the Project Manager, or SFMTA's designee, in his or her sole discretion, concludes have been satisfactorily performed. The SFMTA will pay Contractor within 30 calendar days of receipt of the invoice, unless the SFMTA notifies Contractor that a dispute as

to the invoice exists. In no event shall City be liable for interest or late charges for any late payments.

**3.4.1 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

**3.4.2 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of the City's withholding of payments as provided herein.

**3.4.3 Invoice Format.** Invoices furnished by Contractor under this Agreement shall be in a form acceptable to the Controller and City, and shall include a unique invoice number. Contractor shall submit invoices for all allowable charges incurred in the performance of each Task Order. Contractor shall submit no more than one invoice in a month for each Task Order, and each invoice shall contain the following information:

- a. Contract number;
- b. Task Order number;
- c. Description of the work performed or Services rendered;
- d. Name, position, fully burdened hourly billing rate as set forth in Appendix B, dates and hours worked of employee(s) whose labor is invoiced;
- e. Other direct costs/out-of-pocket expenses itemized and with receipts showing the corresponding order of itemization;
- f. Subcontractor costs supported by invoice itemization in the same format as described above;
- g. Total costs;
- h. Completed SFMTA Task Order Invoice Cover Sheet; and
- i. Payroll records substantiating all labor charges for Contractor and all Subcontractors shown on the invoice.

**3.4.4 DBE Payment .** Contractor must submit all required payment forms to enable CCO to monitor Contractor's compliance with the DBE subcontracting commitments under this Agreement. Contractor shall pay its DBE Subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the SBE Ordinance.



The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required payment forms. Failure to submit all required payment forms with each payment request may result in the Controller withholding 20 percent of the payment due pursuant to that invoice until the required payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a required forms to verify its payments to DBE Subcontractors

### **3.4.5 Getting Paid for Goods and/or Services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) the enroller must be their company's authorized financial representative; (ii) the company's legal name, main telephone number, and all physical and remittance addresses used by the company; (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor); and (iv) the company's bank account information, including routing and account numbers.

## **3.5 Grant-Funded Contracts.**

**3.5.1 Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

**3.5.2 FHWA Requirements.** The provisions contained in "U.S. DOT Contract Requirements," attached to this Agreement as Appendix D, are incorporated into this Agreement. If there is any conflict between the FHWA terms and conditions and any other terms and conditions of this Agreement, the FHWA terms and conditions shall take precedence.

**3.6 Audit and Inspection of Records.** Contractor shall maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Services. Contractor shall permit the City to audit, examine, and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records, or personnel, and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall

have the same rights as conferred upon City by this subsection. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.7 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

## **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse Contractor for, services performed beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement." The Contractor shall provide high quality Deliverables that will require minimal revisions by SFMTA. Contractor shall adhere to the quality assurance guidelines set forth in Appendix C, "SFMTA Contractor Checklist for Document Submittals," and respond fully and promptly to requests for revisions to initial Submittals from the City in order to finalize documents.

**4.2 Priority of Documents.** All requirements of the RFP and the representations made in the Proposal that are not in conflict with provisions of this Agreement are incorporated by reference and made an integral part of this Agreement as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP or Proposal shall control. In case of conflict between the RFP and the Contractor's Proposal, the RFP shall govern. Documents listed as Appendices to this Agreement are incorporated by reference as though fully set forth herein.

**4.3 Information and Data.** Contractor shall request in writing any information and data it requires to prepare proposal for or perform Services described in each Task Order.

Contractor shall identify the timing and priority in which this information and data will be required. The Parties shall reach agreement as to the availability and delivery time for this data and information during the Proposal phase for each Task Order.

**4.4 Presentations.** If requested by City, Contractor shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.

**4.5 Task Order Requirements.** The SFMTA will define the requirements of each Task Order. The Parties will agree on the scope of services, cost, and estimated time to perform each Task Order before Contractor starts work on the Task Order.

**4.5.1 Scope of Services.** The SFMTA will prepare the scope of Services and expected time of completion for each Task Order, and send the scope of Services to Contractor with a written request for a proposal for the performance of the Task Order.

**4.5.2 Contractor Proposal.** Contractor shall prepare and submit a proposal for each Task Order showing:

- (a) A work plan that includes a detailed description by task of the Services to be performed and the means and methods that will be used to perform them;
- (b) A schedule by task and Deliverable, including key milestones and/or critical path Deliverables;
- (c) A list of Contractor's personnel and Subcontractors (in accordance with Appendix B) assigned to each part of the Services, along with: (1) a resume indicating why such personnel or Subcontractors are qualified to perform the Services; (2) a narrative describing the prior experience of personnel and Subcontractors in performing work similar to the Services;
- (d) A detailed cost estimate for each task or Deliverable showing:
  - (i) Estimated hours and hourly rates by position as listed in Appendix B for both Contractor and Subcontractor personnel. Labor hours for preparing monthly invoices or filling out required DBE forms will not be allowed; additional Subcontractor program management labor hours by Contractor will not be allowed. Overtime labor hours will not be allowed without prior written approval from the Project Manager. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;
  - (ii) Estimated reasonable out-of-pocket expenses. Contractor may charge a fixed percentage mark-up for out-of-pocket expenses as set forth in section 3.3.2(d) of this Agreement. All expenses must be pre-approved in writing by the Project Manager.

**4.5.3 Negotiation of Cost.** The Project Manager will review the Proposal and negotiate for each Task Order either a lump-sum price per task or Deliverable, or number of hours per task or Deliverable, as described in Section 3.3.1.

**4.5.4 Record of Negotiations.** The Project Manager will document the negotiations and any agreement in a record of negotiations.

**4.5.5 Subcontracting Goals.** Upon completion of negotiations for each Task Order, Contractor shall provide Project Manager a memo describing the proposed DBE goal associated with the Task Order. The memo shall include a table that lists: (1) all firms performing Services on the Task Order; (2) whether the firm is a DBE; (3) the dollar value and percentage of work attributed with each firm; and (4) the overall calculated DBE goal for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's DBE goal memo, approve or deny the goal, and issue a memo to file by CMD. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in this Agreement. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall DBE goal set forth in the Agreement.

**4.5.6 Controller Certification.** The City will request certification from the Controller that adequate funds are available to proceed with the Task Order as agreed.

**4.5.7 Notice to Proceed.** After the certification of each Task Order, a Purchase Order will be issued by the City, and the Project Manager will send to the Contractor a written NTP and Task Order number. Contractor shall use the Task Order number and Purchase Order when submitting invoices to the City for payment. Contractor shall not commence work under any Task Order until it receives a corresponding Purchase Order and written NTP from the Project Manager.

**4.5.8 Changes.** Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of Services of the Task Order(s). If there is a material change in the scope of Services of a task, then a proposal, negotiations, and record of negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a Task Order.

**4.5.9 Failure to Agree on Terms of Task Order.** If the Parties do not reach agreement on the terms of any Task Order, the SFMTA may either cancel the Task Order and have the Services performed by other available sources, or direct the Contractor to proceed with the Task Order under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances shall Contractor refuse to undertake a City-ordered task.

**4.6 Personnel and Key Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's SFMTA-approved Subcontractors) to perform the Services. Contractor shall comply with City's reasonable requests regarding assignment and removal of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the time set forth in the corresponding Task Order. Contractor agrees that the following personnel ("Key Personnel") shall be

committed and assigned to provide services under this Agreement to the level required by SFMTA for the term of the Agreement and shall also be staffed at Contractor's local offices within the San Francisco Bay Area for all such time:

Rochelle Germano, Circlepoint  
Ivy Morrison, Circlepoint  
Nguyen Pham, Circlepoint

Contractor shall advise SFMTA immediately any time one of the Key Team Members deviates from its committed role or time on the Task Order (e.g., is assigned to another project). SFMTA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

**4.7 Current Workload and Available Resources.** Contractor covenants that its current workload and the workload of its Subcontractors will not affect the commencement and the progress of the Services performed under this Agreement. Contractor shall have all the necessary professional, technical, and support personnel, including those of the Subcontractors', available, ready and mobilized to perform the Services within two weeks of the receipt of NTP on a particular Task Order. In addition, Contractor shall make good faith efforts to execute all applicable Subcontracts within three weeks of NTP. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

**4.8 Transmittal of Deliverables.** When requested by the Project Manager, and after completion of each Task Order or Deliverable, Contractor shall transmit to the SFMTA all work product (duplicates and originals) produced or accumulated in the course of its and its Subcontractors' work on this Agreement. Contractor's project manager and other Key Personnel shall have thoroughly reviewed and approved all work product and signed off as such prior to transmitting them to the SFMTA.

**4.9 Reserved (Reproduction of Work Product).**

**4.10 SFMTA's Responsibilities Regarding Deliverables .** The SFMTA shall review and comment on Deliverables within 14 calendar days of receipt by SFMTA. The SFMTA and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the approved Task Order. The SFMTA's review and comments of Contractor submittals shall in no way relieve the Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the SFMTA relieve the Contractor of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

If Contractor considers certain SFMTA review comments or directives, either written or oral, to require work efforts not included in the approved Scope of Services for each Task Order, the Contractor shall provide SFMTA with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of

discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.8 above.

**4.11 Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 “Additional Requirements Incorporated by Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City’s execution of this Agreement constitutes its approval of Subcontractors listed below.

- a) Fall Line
- b) Square One
- c) Daniller
- d) InterEthnica

**4.12 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

**4.12.1 Independent Contractor.** For the purposes of this Article 4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the Services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health, or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees, and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state, or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor

agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.12.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

**4.13 Assignment.** The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

**4.14 Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

**5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:**

- (a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- (b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

**5.1.3** All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties." All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

**5.1.4** Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.



5.1.5 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.6 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.7 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and Subcontractors.

5.1.8 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, contractors and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City

from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT AMOUNT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

**6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

7.1 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by SFMTA.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At SFMTA’s direction, assigning to SFMTA any or all of Contractor’s right, title, and interest under the orders and subcontracts terminated. Upon such

assignment, SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that SFMTA designates to be completed prior to the date of termination specified by SFMTA.

(f) Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which SFMTA has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to SFMTA an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5 percent of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to SFMTA, and any other appropriate credits to SFMTA against the cost of the Services or other work.

8.1.4 In no event shall SFMTA be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, SFMTA may deduct: (i) all payments previously made by SFMTA for Services covered by Contractor’s final invoice; (ii) any claim which SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and SFMTA’s estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 SFMTA’s payment obligation under this Section shall survive termination of this Agreement.

**8.2 Termination for Default; Remedies.**

8.2.1 Each of the following shall constitute an immediate event of default (“Event of Default”) under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

|           |   |
|-----------|---|
| 3.7       | Submitting False Claims.  |
| 4.13      | Assignment  |
| Article 5 | Insurance and Indemnity   |
| Article 7 | Payment of Taxes  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 10.10     | Alcohol and Drug-Free Workplace                                   |
| 11.10     | Compliance with Laws  |

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor’s property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with

respect to any substantial part of Contractor’s property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

**8.3 Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

|           |  |
|-----------|--|
| 3.4.1     | Payment Limited to Satisfactory Services           |
| 3.5.1     | Grant Funded Contracts - Disallowance              |
| 3.6       | Audit and Inspection of Records                    |
| 3.7       | Submitting False Claims                            |
| Article 5 | Insurance and Indemnity                            |
| 6.1       | Liability of City                                  |
| 6.3       | Liability for Incidental and Consequential Damages |

|           |   |
|-----------|---|
| Article 7 | Payment of Taxes  |
| 8.1.6     | Payment Obligation  |
| 9.1       | Ownership of Results  |
| 9.2       | Works for Hire  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 11.6      | Dispute Resolution Procedure                                      |
| 11.7      | Agreement Made in California; Venue                               |
| 11.8      | Construction  |
| 11.9      | Entire Agreement  |
| 11.10     | Compliance with Laws  |
| 11.11     | Severability  |

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

## **Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at [www.sfgov.org](http://www.sfgov.org) under “Government.”

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

### **10.4 Nondisclosure of Private, Proprietary or Confidential Information.**

10.4.1 If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

10.4.2 In the performance of Services, Contractor may have access to City’s proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

### **10.5 Nondiscrimination Requirements**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.



**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Disadvantaged Business Enterprise Program.**

**10.6.1 General.** The SFMTA is committed to a Disadvantaged Business Enterprise Program (DBE Program) for the participation of DBEs in contracting opportunities. Accordingly, Contractor must comply with all applicable federal regulations regarding DBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to DBEs performing work under this Agreement. More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

**10.6.2 Compliance with DBE Program.** Contractor shall comply with the DBE provisions contained in Appendix E attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the DBE goal set for the total dollar amount awarded for the Services to be performed under this Agreement. Failure of Contractor to comply with any of these requirements shall be deemed a material breach of this Agreement.

**10.6.3 Non-Discrimination in Hiring.** Pursuant to City and SFMTA policy, Contractor is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure non-discrimination in Contractor's employment practices.

**10.7 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

**10.9 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using, or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701)

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**10.12 Reserved. (Slavery Era Disclosure)**

**10.13 Reserved. (Working with Minors)**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions**

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor’s obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Reserved. (Public Access to Nonprofit Records and Meetings)**

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)**

**10.18 Reserved. (Preservative Treated Wood Products)**

**Article 11 General Provisions**

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Deanna Desedas  
Marketing and Communications Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
[Deanna.desedas@sfmta.com](mailto:Deanna.desedas@sfmta.com)

OR

Amber Vasché

Sustainable Streets Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
[Amber.vasche@sfmta.com](mailto:Amber.vasche@sfmta.com)

To Contractor: Scott Steinwert  
President and CEO  
1814 Franklin Street, Suite 1000  
Oakland, CA 94612

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

**11.2 Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

**11.3 Reserved. (Payment Card Industry (PCI) Requirements)**

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's

claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.9 Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated September 14, 2016. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

## **Article 12 MacBride Principles And Signature**

**12.1 MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

## **Article 13 Large Vehicle Driver Safety Training Requirements**

13.1 Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

13.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages

from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

| <b>CITY</b>   | <b>CONTRACTOR</b>  |
|---|--|
| <p><b>San Francisco<br/>Municipal Transportation Agency</b></p> <hr/> <p>Edward D. Reiskin<br/>Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____<br/>Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera<br/>City Attorney</p> <p>By: _____<br/>Isidro A. Jiménez<br/>Deputy City Attorney</p> | <p>Circlepoint</p> <hr/> <p>Scott Steinwert<br/>President and CEO<br/>1814 Franklin Street, Suite 1000<br/>Oakland, CA 94612</p> <p>City vendor number: <b>15081</b></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> |

**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- C: Contractor Checklist for Document Submittals
- D: U.S. DOT Federal Requirements for Personal Services Contracts
- E: Disadvantaged Business Enterprise Information (Professional Services Insert)



## **Appendix A Scope of Services**

### **I. Policy Context**

Contractor shall use the SFMTA's Public Outreach and Engagement Team Strategy (POETS) as guidance in preparing strategies, engagements, and Deliverables that are consistent with the SFMTA's standards below. All Task Orders are in place to help ensure the Project Managers meet the needs of community stakeholders while supporting the SFMTA's key policies, including but not limited to:

- a. SFMTA FY 2013-18 Strategic Plan:  
<https://www.sfmta.com/sites/default/files/pdfs/FY%202013%20-%20FY%202018%20SFMTA%20Strategic%20Plan.pdf>
- b. Transit First Policy (SF Charter, Article VIIA, SEC. 8A.115):  
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- c. POETS
- d. SFMTA Brand Standards
- e. Complete Streets Policy (SF Public Works Code, Article II, SEC. 2.4.13):
- f. [http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- g. Vision Zero Goal <http://visionzerosf.org/>
- h. Better Streets Plan: <http://www.sfbetterstreets.org/>
- i. Bicycle Strategy [https://www.sfmta.com/sites/default/files/BicycleStrategyFinal\\_0.pdf](https://www.sfmta.com/sites/default/files/BicycleStrategyFinal_0.pdf)
- j. Pedestrian Strategy <http://archives.sfmta.com/cms/rpedmast/documents/1-29-13PedestrianStrategy.pdf>
- k. Walk First Program <http://walkfirst.sfplanning.org/>

### **II. Scope of Services**

#### **A. General Description of Services**

Contractor will generally support SFMTA project teams with planning, crafting, and delivering best practices, and culturally competent outreach and engagement with stakeholder communities and the public at-large. Depending on the needs of the SFMTA and project team, a Task Order may include a request for comprehensive services for a project – from strategy/planning to execution and evaluation – or be limited to specific services or phases of the project.

## B. Specific Tasks

Specific Services may include, but are not limited to, the following tasks:

### 1) Planning for Public Outreach and Engagement

- a) Create effective public participation plans that account for project requirements, funding needs, and other related SFMTA projects. Contractor shall work with Project Managers to develop all necessary planning as outlined by POETS for the assigned project. Plans must be consistent with the POETS and utilize industry best practices in public participation, such as those developed by the International Association for Public Participation (IAP2).
- b) Develop communications assessments that consider, but are not limited to, the following elements:
  - i) Project objectives, goals, and requirements
  - ii) Key stakeholders and project impacts by stakeholder
  - iii) Communications and outreach priorities
  - iv) Effectiveness metrics and methods of evaluation
  - v) Timelines for outreach in coordination with project planning, environmental clearance, design, construction, and evaluation stages, as well as public hearings, SFMTA Board meetings, scoping hearings, or other required Federal, State or local approvals.
- c) Develop outreach and communication plans that support project goals and objectives for public participation plans.
  - i) Create a comprehensive communications and outreach strategy that engages diverse stakeholders (including people left out of primary stakeholder groups, such as merchant and neighborhood associations), other affected parties and the public-at-large.
  - ii) Outline communications and outreach tactics through key project phases.
  - iii) Identify opportunities for early outreach and engagement.
  - iv) Develop a toolkit of customized approaches to engage stakeholders on the project.
  - v) Compile a customized stakeholder contact list.
  - vi) Outline key messages.
  - vii) Identify coaching and training needs for Project Manager and staff, including media training, active listening, facilitation and mediation, negotiations, and handling difficult people and situations.

## 2) Implementation of Public Outreach and Engagement

- a) Assist with the implementation of outreach meetings
  - i) Schedule and reserve venues and provide logistical support for outreach meetings, inter- and intra-agency meetings, briefings, outreach at standing community events, tours and site visits, including transportation access, presentation set-up, sign-in, materials production, and other duties as assigned.
  - ii) Ensure broad awareness among relevant audiences of scheduling and content for stakeholder and outreach meetings.
  - iii) Develop presentations (e.g., PowerPoint) and presentation boards for meetings.
  - iv) Provide meeting facilitation.
  - v) Record meeting minutes, transcribe audio visual recordings, and draft meeting debriefs.
  - vi) Track meeting attendance.
  
- b) Collect and manage stakeholder engagement and feedback
  - i) Conduct and facilitate formal and informal focus groups.
  - ii) Design and administer surveys using different formats, including online, phone, intercept, and in-person interviews.
  - iii) Hold design charrettes.
  - iv) Solicit on-site, in-person feedback.
  - v) Conduct balloting or other voting mechanisms.
  - vi) Set up and monitor hotlines, including working with 311 staff to triage project-related calls; create new hotlines, as appropriate.
  - vii) Aggregate feedback to allow for detailed reporting and trend analysis.
  - viii) Prepare detailed outreach history summaries in preparation for legislative action or completion of project community phase, including:
    - (1) Reports documenting all public engagement activities
    - (2) Photographs from engagement events
    - (3) Compilation of main engagement themes (as described above)
    - (4) Counts and analysis of the number of individuals and stakeholder groups participating
  - ix) Identify and procure specific collection and measurement tools, as needed.
  
- c) Maintain stakeholder contacts and correspondence
  - i) Monitor, track and provide follow-up responses to constituent correspondence.
  - ii) Manage stakeholder concerns about scheduling meetings, logistics, and notification protocol.
  - iii) Update and maintain project stakeholder contact database, including constituents who are on- and offline.

- iv) Develop expanded stakeholder mailing lists for mailings and email blasts to reach a broad public audience.

### 3) Design and Development of Communications Materials

#### a) Collateral Materials

- i) Following the SFMTA's brand standards, write and design culturally relevant project collateral materials, such as fact sheets, mailers, reports, and presentation decks, and templates using maps, infographics, diagrams, renderings, illustrations, and photographs.
- ii) Translate materials for non-English language speakers on request.
- iii) Ensure collateral formats are compliant with ADA accessibility standards.

#### b) Digital Assets

- i) Assist in development and implementation of digital communications to support web pages, emails, blogs and social media.
- ii) Draft project information for websites and for social media.
- iii) Ensure digital assets are compliant with ADA accessibility standards.
- iv) Provide social media monitoring services.

#### c) Video Production

- i) Write, produce and edit videos that increase public understanding of project.
- ii) Develop public dissemination plan for videos.
- iii) Translate videos for non-English language speakers on request.

#### d) Miscellaneous Items

- i) Develop customized give-away materials (i.e., "swag") that support public interest and engagement.
- ii) Procure miscellaneous materials and supplies for meetings and presentations.

**Appendix B  
Calculation of Charges**

Per Section 3.3.2, in addition to the rates shown below, Contractor may charge City a 5% markup on Subcontractor labor. Contractor shall itemize the markup in every invoice

| <b>Position</b>         | <b>Unburdened Hourly Rate</b> | <b>Audited Overhead Rate</b> | <b>Fixed Contractor Fee (Cap)</b> | <b>Not-to-Exceed Fully Burdened Hourly Rate</b> |
|-------------------------|-------------------------------|------------------------------|-----------------------------------|---|
| <b>Circlepoint</b>      |                               |                              |                                   |   |
| Communications Director | \$ 62.50                      | 187.72%                      | 10.0%                             | \$ 197.81                                       |
| Project Director        | \$ 62.30                      | 187.72%                      | 10.0%                             | \$ 197.17                                       |
| Principal               | \$ 69.51                      | 187.72%                      | 10.0%                             | \$ 220.00                                       |
| Sr Project Associate    | \$ 34.66                      | 187.72%                      | 10.0%                             | \$ 109.70                                       |
| Sr Art Director         | \$ 53.00                      | 187.72%                      | 10.0%                             | \$ 167.74                                       |
| Sr Graphic Designer     | \$ 36.28                      | 187.72%                      | 10.0%                             | \$ 114.82                                       |
| Sr Web Designer         | \$ 37.24                      | 187.72%                      | 10.0%                             | \$ 117.86                                       |
| Web Designer            | \$ 27.00                      | 187.72%                      | 10.0%                             | \$ 85.45  |
| Graphic Designer        | \$ 33.00                      | 187.72%                      | 10.0%                             | \$ 104.44                                       |
| Project Manager         | \$ 39.90                      | 187.72%                      | 10.0%                             | \$ 126.28                                       |
| Project Associate       | \$ 27.65                      | 187.72%                      | 10.0%                             | \$ 87.51  |
| Project Coordinator     | \$ 24.76                      | 187.72%                      | 10.0%                             | \$ 78.36  |
| Admin                   | \$ 35.96                      | 187.72%                      | 10.0%                             | \$ 113.81                                       |
| Copies (B/W)            |                               |                              |                                   | \$ 0.06-0.25/page                               |
| Copies (Color)          |                               |                              |                                   | \$ 0.50-1.75/page                               |
| Faxes                   |                               |                              |                                   | \$ 0.60/page                                    |
| Postage/Phone           |                               |                              |                                   | At cost   |
| Online surveys          |                               |                              |                                   | \$ 20 each                                      |
| Eblasts                 |                               |                              |                                   | \$ 14 each                                      |
| Mileage                 |                               |                              |                                   | GSA rate  |
| Web hosting             |                               |                              |                                   | \$ 300/year                                     |
| Web domain              |                               |                              |                                   | \$ 15/year                                      |
| Vendor services         |                               |                              |                                   | Cost + markup                                   |

| <b>Position</b>               | <b>Unburdened Hourly Rate</b>   | <b>Audited Overhead Rate</b> | <b>Fixed Contractor Fee (Cap)</b> | <b>Not-to-Exceed Fully Burdened Hourly Rate</b> |
|-------------------------------|---|------------------------------|-----------------------------------|---|
| <b>Fall Line</b>              |   |                              |                                   |   |
| President                     | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$ 220.00                                       |
| <b>Square One</b>             |   |                              |                                   |   |
| Principal                     | \$69.00   | 138.80%                      | 10%                               | \$ 181.25                                       |
| Senior Production Artist      | \$46.00   | 138.80%                      | 10%                               | \$ 120.83                                       |
| <b>Daniller</b>               |   |                              |                                   |   |
| President                     | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$ 216.00                                       |
| Associate Principal           |   |                              |                                   | \$ 185.00                                       |
| Senior Outreach Associate     |   |                              |                                   | \$ 132.00                                       |
| Junior Outreach Associate     |   |                              |                                   | \$ 105.00                                       |
| Graphic Designer              |   |                              |                                   | \$ 120.00                                       |
| <b>InterEthnica</b>           |   |                              |                                   |   |
| Principal/Cultural Consultant | \$73.71   | 85%                          | 10%                               | \$ 150.00                                       |
| Account Manager               | \$61.43   | 85%                          | 10%                               | \$ 125.00                                       |
| Project Manager               | \$61.43   | 85%                          | 10%                               | \$ 125.00                                       |
| Graphic Designer              | \$61.43   | 85%                          | 10%                               | \$ 125.00                                       |
| Illustrator                   | \$50.00   | 85%                          | 10%                               | \$ 101.75                                       |
| Typesetter                    | \$46.68   | 85%                          | 10%                               | \$ 95.00  |
| Outreach Staff                | \$36.86   | 85%                          | 10%                               | \$ 75.01  |
| Outreach Lead                 | \$46.68   | 85%                          | 10%                               | \$ 95.00  |
| Translator                    | \$50.00   | 85%                          | 10%                               | \$ 101.75                                       |
| Editor                        | \$50.00   | 85%                          | 10%                               | \$ 101.75                                       |
| Senior Interpreter            | \$90.90   | 85%                          | 10%                               | \$ 184.99                                       |
| Interpreter                   | \$85.00   | 85%                          | 10%                               | \$ 172.98                                       |
| Researcher                    | \$73.71   | 85%                          | 10%                               | \$ 150.00                                       |
| Assistant Researcher          | \$46.68   | 85%                          | 10%                               | \$ 95.00  |

| <b>Position</b>               | <b>Unburdened Hourly Rate</b> | <b>Audited Overhead Rate</b> | <b>Fixed Contractor Fee (Cap)</b> | <b>Not-to-Exceed Fully Burdened Hourly Rate</b> |
|-------------------------------|-------------------------------|------------------------------|-----------------------------------|---|
| <b>InterEthnica continued</b> |                               |                              |                                   |   |
| Intern                        | \$25.00                       | 85%                          | 10%                               | \$ 50.88  |
| Meeting Assistants            | \$25.00                       | 85%                          | 10%                               | \$ 50.88  |
| Copywriter                    | \$65.00                       | 85%                          | 10%                               | \$ 132.28                                       |
| Photographer                  | \$90.00                       | 85%                          | 10%                               | \$ 183.15                                       |
| Sound Technician              | \$75.00                       | 85%                          | 10%                               | \$ 152.63                                       |
| Voice over Talent             | \$61.43                       | 85%                          | 10%                               | \$ 125.00                                       |
| Administration                | \$37.50                       | 85%                          | 10%                               | \$ 76.29  |

**InterEthnica Audio Translation Equipment:**

Headset \$18 per head set

Translation transmitter \$125 per day

Delivery, set-up and equipment test \$125 per event.

On site audio technician available will be billed at \$125 per hour.

**InterEthnica Translation Charges:**

Translation minimum charge of \$125 per language.

This applies to documents that contain a word count of 200 or less.

\*The exception to this rule is advertising and slogan translation, which is charged at an hourly rate of \$125.

Translation rates are \$0.27 to \$0.40 per word depending on the language and the complexity of the source text.

Spanish - \$0.27 per word

Hmong - \$0.32 per word

Arabic -\$0.30 per word

Russian - \$0.32 per word

Chinese - Mandarin and Cantonese - \$0.30 per word

Vietnamese - \$0.32 per word

Tagalog - \$0.35 per word

Russian - \$0.30 per word

Japanese - \$0.32 per word

Korean - \$0.32 per word

Punjabi - \$0.32 per word

**Appendix C**  
**Contractor Checklist for Document Submittals**

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)**

Task Order Number: \_\_\_\_\_

Task Order Title: \_\_\_\_\_

This checklist must be filled in by the contractor and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

1. Document is edited for grammatical and typographical errors, clarity, and format.
2. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
3. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
4. All document sections, tables, figures, appendices, etc. are submitted.
5. Footnotes are on same page as the reference (no endnotes).
6. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
7. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
8. Data in tables and figures are cross-checked with text.
9. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
10. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
11. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
12. All document background reports are finalized and included with the submittal packet.
13. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Contractor at the Task Order level:
  - a. Date / Times;



- b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
- c. Name and contact information of contractor performing the count effort;
- d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
  - i. For Machine Counts: Street Name\_Direction of Approach\_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)
  - ii. For Turning Movement Counts by Hand: Street Name\_Cross Street\_Time of Day (i.e., LAGUNA CLAY PM);
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
- f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
- g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

**Notes:**

Firm Name: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix D

# U.S. DOT FEDERAL REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

### I. DEFINITIONS

- A. **Approved Project Budget** means the most recent statement, approved by the U.S. DOT, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. **California Department of Transportation (Caltrans)** is an agency of the State of California and a direct recipient of grant funds from FHWA.
- C. **City means** the City and County of San Francisco, a municipal corporation, and its departments and agencies.
- D. **Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from U.S. DOT.
- E. **Cooperative Agreement** means the instrument by which U.S. DOT awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which U.S. DOT takes an active role or retains substantial control.
- F. **Federal Highway Administration (FHWA)** is an operating administration of the U.S. DOT.
- G. **Federal Directive** includes any federal circular, notice, order or guidance providing information about DOT or FHWA programs, application processing procedures, and Project management guidelines.
- H. **Grant Agreement** means the instrument by which FHWA, acting through CalTrans, awards federal assistance to a specific Recipient to support a particular Project, and in which FHWA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- I. **Government** means the United States of America and any executive department or agency thereof.
- J. **Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement. For FHWA projects, the term "Project" means the task or set of tasks listed as described in the grant application and grant agreement between Caltrans and the Subrecipient.
- K. **Recipient** means any entity that receives federal assistance from U.S. DOT, FTA, FHWA or through CalTrans using DPT funds to accomplish the Project. For the purpose of this Agreement, Recipient is the City.
- L. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.

- M. **Subrecipient** means the San Francisco Municipal Transportation Agency, an agency of the City and County of San Francisco, which receives Federal assistance through Caltrans.
- N. **Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by U.S. DOT.
- O. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from U.S. DOT.
- P. **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

## II. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in any grant agreement for work under this Agreement, 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.

## III. ACCESS TO RECORDS

- A. The Contractor agrees to provide the City and County of San Francisco, the U.S. DOT Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the U.S. DOT Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

## IV. DEBARMENT AND SUSPENSION

The City is prohibited from making any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." By submitting a Proposal, and separately by executing this Agreement, Contractor certifies that it is not debarred or otherwise prohibited from bidding on, proposing for, and entering into this Agreement.

This is a material representation of fact by Contractor that City will rely upon in determining Contractor's responsibility and eligibility for award of the Agreement. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in

addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR Parts 180, Subpart C and 1200, Subpart C while its Proposal is valid and throughout the term of this Agreement and any other contract with the City. Contractor shall a provision requiring compliance with those authorities and this Section in its subcontracts and other lower tier covered transactions.

## **V. COST PRINCIPLES**

- A. Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Contractor to City.
- D. All reimbursements to Contractor will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

## **VI. TRAVEL AND PER DIEM PAYMENTS**

Reimbursements to Contractor and its subcontractors for travel and subsistence (per diem) expenses shall not exceed rates authorized to be paid rank and file California State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by Contractor are in excess of DPA rates, Contractor is responsible for the cost difference, and any overpayments inadvertently paid by City shall be reimbursed to City by Contractor on demand within 30 days of invoice.

## **VII. ACCOUNTING SYSTEM**

Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs by line item for the Project. The accounting system of shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by City.

## **VIII. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor; to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or

violation of this warranty, the SFMTA shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **IX. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

- A. The City 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 the City, 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 U.S. DOT. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **X. 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, 41 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 U.S. DOT 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. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR 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 U.S. DOT 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 U.S. DOT 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements U.S. DOT may issue.
- C. **Flowdown to Subcontractors.** The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by U.S. DOT, modified only if necessary to identify the affected parties.
- D. **Contract Assurance.** The Contractor and its subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or its subcontractors 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 SFMTA deems appropriate.

## **XI. CIVIL RIGHTS – STATE**

- A. In the performance of this Agreement, Contractor and its subcontractors shall not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its subcontractors shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. 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. Contractor and its subcontractors shall post in conspicuous places, available to employees for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment section.
- B. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.
- C. Contractor shall include the above provisions in all subcontractors to perform work under this Agreement.

## **XII. DBE/SBE ASSURANCES**

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or subcontractor 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 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor 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 SFMTA deems appropriate.

## **XIII. PATENT RIGHTS** (*applicable to contracts for experimental, research, or development projects financed by the U.S. DOT*)

- A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the U.S. DOT.
- B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through U.S. DOT, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.

## **XIV. RIGHTS IN DATA AND COPYRIGHTS** (*Applicable to contracts for planning, research, or development financed by U.S. DOT*)

- A. **Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

- B. Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
1. **Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  2. **Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:
    - a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
    - b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by U.S. DOT.
  3. **U.S. DOT Intention.** When U.S. DOT awards Federal assistance for an experimental, research or developmental work, it is U.S. DOT’s general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless U.S. DOT determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit U.S. DOT to make available to the public, either U.S. DOT’s license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City’s use the costs of which are financed with Federal transportation funds for capital projects.
  4. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
  5. **Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or



be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

6. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
  7. **Application to Subcontractors.** Unless U.S. DOT determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.
- C. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.
- D. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through U.S. DOT, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- XV. **CONTRACT WORK HOURS AND SAFETY STANDARDS** (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)
- A. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
  - B. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
  - C. **Withholding for unpaid wages and liquidated damages** - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor,

- D. or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- E. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

## **XVI. ENERGY CONSERVATION REQUIREMENTS**

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.

## **XVII. CLEAN WATER REQUIREMENTS**

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

## **XVIII. CLEAN AIR**

- A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to U.S. DOT and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by U.S. DOT.

## **XIX. PRIVACY**

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, 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 Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. 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 U.S. DOT.

## **XX. TERMINATION FOR CONVENIENCE OF CITY**

See Agreement Terms and Conditions.

**XXI. TERMINATION FOR DEFAULT**

See Agreement Terms and Conditions.

**XXII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

- 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 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, 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 U.S. DOT-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 U.S. DOT 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 U.S. DOT. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**XXIII. FLY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**XXIV. SAFETY**

- a. Contractor shall comply with California OSHA regulations applicable to Contractor regarding necessary safety equipment or procedures. Contractor shall comply with safety instructions issued by SFMTA’s Safety Officer and other SFMTA representatives.

- b. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

**XXV. TEXTING WHILE DRIVING; DISTRACTED DRIVING**

Consistent with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm> ) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

**XXVI. SEAT BELT USE**

In compliance with Executive Order 13043 “Increasing Seat Belt Use in the United States”, April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

**XXVII. INCORPORATION OF DOT TERMS**

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

## Appendix E

### DISADVANTAGED BUSINESS ENTERPRISE INFORMATION (PROFESSIONAL SERVICE INSERT)

#### 1.1 FEDERAL HIGHWAY ADMINISTRATION (FHWA) FUNDED CONTRACTS

- A. This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR 26) entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” The regulations in their entirety are incorporated herein by this reference.
- B. Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26.5 are encouraged to participate in this Contract. The Contractor shall ensure that DBEs have the opportunity to participate in the performance of this Contract and shall take all necessary and reasonable steps for this assurance. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

#### 1.2 TERMS AS USED IN THIS DOCUMENT

- A. **Annual Anticipated DBE Participation Level (AADPL)**: The level of participation that the local agency would expect DBEs to achieve in the absence of discrimination and the effects of past discrimination on federal-aid contracts awarded in its jurisdiction in a given Federal Fiscal Year. This includes an assessment of the availability for specific items of work that DBEs could reasonably be expected to compete for subcontracting opportunities on a federal-aid contract and their likely availability for work on federal-aid contracts that will be awarded in a given fiscal year. The AADPL is not a goal that the local agency needs to achieve, but the AADPL will be used by Caltrans to establish a statewide overall DBE participation goal as required by Title 49, Part 26 of the CFR. The local agency must have an approved AADPL on file with the DLAE before federal funds can be authorized on any new federal-aid contractor or construction contract.
- B. **Disadvantaged Business Enterprise (DBE)**: A for-profit “small business concern” is as defined in 49 CFR 26.65 that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must also control the management and daily business operations. These individuals must be citizens of the United States and (1) any individual who the City finds to be a socially and economically disadvantaged individual on a case-by-case basis, or (2) who are either Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, or any other group found to be socially and economically disadvantaged by the Small Business Administration. This definition was revised in 1987 to include women.

#### 1.3 DBE PROGRAM

## SFMTA FHWA DBE PROGRAM

- A.** Bidders shall be fully informed in respect to the requirements of the referenced federal DBE regulations and the DBE program developed by the California Department of Transportation pursuant to those regulations. Attention is directed to the following matters:
1. A DBE must be a small business concern as defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
  2. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, as a vendor of material or supplies, or as a trucking company.
  3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
  4. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
  5. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
  6. A prime contractor who is a certified DBE is eligible to claim all of the work in the contract toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.
  7. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
    - a. The Caltrans "Civil Rights" web site at:  
<http://www.dot.ca.gov/hq/bep>
    - b. The Caltrans DBE Directory: This Directory may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.
- B.** When reporting DBE participation, bidders may count the cost of materials or supplies purchased from DBEs as follows:
1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
  2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public

## SFMTA FHWA DBE PROGRAM

in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph B.2. if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph B.2.

3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

- C.** When reporting DBE participation, bidders may count the participation of DBE trucking companies as follows:
1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
  2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract;
  3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs;
  4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract;
  5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE;
  6. For the purposes of this paragraph C, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- D.** When a DBE performs as a participant in a joint venture, a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will counted toward the DBE participation.

## **SFMTA FHWA DBE PROGRAM**

### **E. PROMPT PAYMENT**

No later than three (3) working days from the date of Contractor's receipt of progress payments by the City, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors, unless the prime contractor notifies CCO in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime contractor and the subcontractor. Within five (5) working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractors.

Contractor may withhold retention from subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within thirty (30) days of City's payment of retention to Contractor for satisfactory completion of all work required of a subcontractor, Contractor shall release any retention withheld to the subcontractor. Satisfactory completion shall mean when all the tasks called for in the subcontract with subcontractor have been accomplished and documented as required by City.

If the Contractor does not pay its subcontractor as required under the above paragraph, it shall pay interest to the subcontractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.



# SFMTA FHWA DBE PROGRAM

## 1.4 POST AWARD FORMS:

### 1. SFMTA FORM No. 6 - PROGRESS PAYMENT REPORT

This form shall be completed by Contractor, including each joint venture partner, if applicable, and submitted to the Project Manager (copy to CCO) with its monthly progress payment applications after award of Contract. Contractors must provide complete information and documentation on SFMTA FORM No. 6 for the immediately preceding period for DBE joint venture partners and all subcontractors that are utilized on the Contract.

### 2. SFMTA FORM No. 7 - SUBCONTRACTOR PAYMENT

**DECLARATION** Contractor shall complete SFMTA FORM No. 7 and submit it to CCO (copy to Project Manager) within five (5) working days following each payment to subcontractors in compliance with prompt payment requirements. Note: This form shall provide evidence that the Contractor has complied with the prompt payment provisions of the Contract.

### 3. SFMTA FORM No. 8 – DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICES CONTRACTS

This form shall be completed when processing all modifications, supplements or change orders that cumulatively increase the original amount of the contract. All prime contractors, individual joint venture partners, subcontractors and any other vendors participating in the modification must be listed.

### 4. EXHIBIT 17-F FINAL REPORT UTILIZATION OF DISADVANTAGED BUSINESSES

Contractor, including all joint venture partners, if any, shall complete Exhibit 17-F and submit it to the Project Manager (copy to CCO) with its final progress payment application. Contractor must provide complete and accurate information on Exhibit 17-F and have it executed by all DBE joint venture partners and all subcontractors.

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Circlepoint**

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**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Circlepoint  
Contract No. SFMTA2016-40/2 (FTA)**

This Agreement is made this 18th day of April, 2017, in the City and County of San Francisco, State of California, by and between Circlepoint, 1814 Franklin St, Suite 1000, Oakland, Ca (Contractor) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

- A. The SFMTA wishes to contract with a qualified public relations firm for public outreach and engagement services to be provided on an as-needed basis.
- B. The SFMTA issued a Request for Proposals (RFP) on July 29, 2016 and selected Contractor as the highest qualified scorer pursuant to the RFP.
- C. The Small Business Entity (SBE) subcontracting participation requirement for this Agreement is 35 %.
- D. Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- E. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 41409-15/16 on 01/04/2016.

Now, THEREFORE, the Parties agree as follows:

**Article 1 Definitions**

The following definitions apply to this Agreement:

- 1.1 Agreement:** This contract document and all referenced appendices to this Agreement, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference.
- 1.2 Award:** Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute the Contract with the selected proposer.
- 1.3 CCO:** Contract Compliance Office of the SFMTA.

**1.4 City:** The City and County of San Francisco, a municipal corporation, acting by and through the SFMTA.

**1.5 CMD.** The Contract Monitoring Division of the City.

**1.6 Contractor:** Circlepoint

**1.7 Days:** Unless otherwise designated, the word “Days” refers to working days of the City, which are generally Monday through Friday, excluding holidays. The use of the term “days,” “working days” or “business days” in this Agreement shall be synonymous.

**1.8 Deliverables:** Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

**1.9 Director:** The Director of Transportation of the SFMTA or his/her designee.

**1.10 Effective Date:** The date on which the City's Controller certifies the availability of funds for this Agreement as provided in Section 2.1.

**1.11 Federal Transit Administration (FTA):** An operating administration of the U.S. Department of Transportation.

**1.12 Key Personnel:** The personnel named in Section 4.6.

**1.13 Mandatory City Requirements:** Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.

**1.14 Notice To Proceed (NTP):** A letter or email from the Project Manager notifying Contractor of the day when work is to commence under each Task Order.

**1.15 Party(ies):** The City and Contractor, either collectively or individually.

**1.16 Project Manager:** The designated SFMTA employee who will assume all duties and responsibilities to manage each Task Order.

**1.17 Proposal:** The Contractor's written response to the RFP, or a written request for a proposal for the performance of a Task Order, as the context requires.

**1.18 Purchase Order:** A written order issued by the SFMTA to the Contractor, authorizing the start of work under each Task Order.

**1.19 Request for Proposals (RFP):** The Request for Proposals for As-Needed Public Outreach and Engagement Services issued by the SFMTA on July 29, 2016.

**1.20 San Francisco Municipal Transportation Agency (SFMTA):** The agency of the City with jurisdiction over surface transportation in San Francisco, as provided in the San Francisco Charter Article VIII.A.



**1.21 Services:** The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, and further described by the Task order, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

**1.22 Small Business Enterprise or SBE:** A for-profit, small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.

**1.23 Subcontractor:** Any firm under contract to the Contractor for Services under this Agreement.

**1.24 Task Order:** A written directive from the SFMTA to Contractor to perform specified Services under this Agreement.

## **Article 2 Term of the Agreement**

2.1 The term of this Agreement shall commence on the latter of: (i) April 18, 2017 or (ii) the Effective Date, and shall expire on April 18, 2019 unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **Article 3 Financial Matters**

**3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

**3.3 Compensation.**

**3.3.1 Payment Amount.** Contractor's compensation for the Services shall be based on either: (1) a negotiated lump-sum price per task or Deliverable (which includes all direct and indirect costs, wages and benefits, overhead, profit, and all other costs) for each Task Order; or (2) a negotiated number of hours per task or Deliverable using the hourly rates set forth in Appendix B (Calculation of Charges) plus a fixed contractor fee, and subject to a total amount not to exceed. In no event shall the amount of this Agreement for all Task Orders exceed one million seven hundred fifty thousand dollars (\$1,750,000).

**3.3.2 Method of Computing Hourly Compensation.** For Services paid for on an hourly basis, the SFMTA shall pay Contractor the applicable hourly rates in plus fixed contractor fees, the sum of which equals the fully burdened hourly rates. The hourly rate shall be the sum of the applicable unburdened hourly rate and overhead rate shown in Appendix B. The fixed contractor fee shall cover profit, non-compensable overhead, and other operating costs; the Parties shall negotiate the fixed contractor fee on a Task Order basis, subject to the cap for each fixed contractor fee set forth in Appendix B. In cases where Contractor or a Subcontractor are SBEs or sole proprietors without audited hourly rates, the Parties have negotiated the flat fully burdened hourly rates, inclusive of profit, non-compensable overhead, and other operating costs, set forth in Appendix B. Contractor's mark-up for managing Subcontractors shall be no more than 5% of the fully burdened hourly rate

(a) **Unburdened Hourly Rates.** The unburdened hourly rates (i.e., gross wages or salaries paid to personnel that perform the Services) shown in Appendix B shall be fixed until 24 months after the Effective Date, and may be adjusted thereafter only if the City exercises its option to extend the term of the Agreement. Any adjustment to the hourly rates in Appendix B shall be negotiated by the Parties, except that no adjustment shall exceed the corresponding annual increase in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for All Urban Consumers. No hourly rate shall be adjusted without prior written approval of the SFMTA.

(b) **Overhead Rates.** The overhead rates shown for Contractor and each Subcontractor in Appendix B are estimates of actual overhead rates and may be adjusted after 24 months with prior written approval from the Director of Transportation.

Contractor's and Subcontractors' combined unburdened hourly rates and overhead rates are subject to audit in compliance with Federal requirements.

The overhead rates attached as Appendix B, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within 180 days of the end of Contractor's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Contractor shall submit to the Project Manager Contractor's and all Subcontractors' actual rates during the term of this Agreement. For each rate paid to the Contractor that exceeds the Contractor's or any Subcontractor's actual rate, the Contractor shall reimburse to the City the total difference between the rate paid and Contractor's or Subcontractor's actual rate during the term of this Agreement. Contractor shall reimburse City within 30 days of written notice from City seeking reimbursement. For each actual overhead rate of Contractor or Subcontractor that exceeds the rate paid to Contractor, City shall pay to Contractor the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Contractor within 60 days of City's receipt of all of Contractor's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Contractor's rates as provided above.

(c) **Reimbursable Costs.** This Agreement is subject to federal regulations concerning the reimbursement and audit of expenses, costs and overhead as set in the regulation "Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards," at in 2 CFR Part 200 et seq. ("Federal Cost Requirements") Contractor acknowledges that it is familiar with the Federal Cost Requirements. Contractor shall not seek reimbursement and the City shall not pay reimbursement to Contractor for costs (including but not limited to direct costs, indirect costs, and overhead) that are not compensable under the Federal Cost Requirements. Contractor understands and acknowledges that the City shall not reimburse Contractor for Contractor's costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments to Contractor under this Agreement are subject to audit and adjustment in accordance with the requirements and standards set out in the Federal Cost Requirements.

(d) **Out-of-Pocket Expenses.** The SFMTA shall reimburse Contractor for Contractor's and Subcontractors' actual costs of approved out-of-pocket expenses. Compensation for materials and other approved out-of-pocket expenses, other than travel, shall be at direct cost, plus a mark-up not to exceed 5%. Compensation for travel-related expenses shall be at direct cost without mark-up. The mark-up for media buys shall not exceed 7%. The mark-up for media buys shall be applied by either the Contractor or Subcontractor, whichever is making the purchase, and shall not be combined with the 5% mark-up for other approved out-of-pocket expenses. All out-of-pocket expenses must be pre-approved in writing by the Project Manager. For travel expenses, airfare must be coach class only and reasonable; reservations must be made in a timely fashion to receive the lowest rate possible. Vehicle expenses for travel will only be reimbursed if the travel is outside of a 100-mile radius of the City. Payment for

travel related costs shall not exceed U.S. General Services Administration (GSA) per diem and mileage rates. Legible receipts for all expenses, including travel, must accompany the invoice, or City reserves the right to refuse reimbursement of expenses until receipts are provided.

(e) **Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile, and telecommunication expenses shall not be tracked or reimbursed separately as out-of-pocket costs. Contractor and Subcontractor personnel relocation costs and entertainment or personal expenses shall not be reimbursable under this Agreement. Office and field supplies/equipment expenses shall not be reimbursed unless Contractor demonstrates these supplies and equipment are out of the ordinary, necessary, and used exclusively to provide the Services. If the SFMTA determines that office and field supplies/equipment expenses out of the ordinary, necessary, and used exclusively to provide the Services, such expenses must be pre-approved in writing by the Project Manager. Vehicle expenses for travel within a 100-mile radius of the City will not be reimbursable.

(f) **Use of Public Transportation.** The City has a transit-first policy, and the SFMTA encourages Contractor and Subcontractors to use public transit in performance of the Services to the maximum extent possible. The SFMTA will closely review Contractor's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Taxicabs and hired cars are not considered public transit. The SFMTA reserves the right to refuse to reimburse travel expenses that are not in accordance with these policies.

**3.4 Payment.** Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Each Task Order shall include a schedule for payment of each task or Deliverable as agreed to by the Project Manager and Contractor. The schedule for payment shall clearly state when payment shall be made as either a one-time lump sum upon completion, or as a percentage or dollar amount per unit each month as defined in the Task Order. Under special circumstances, and upon pre-approval by the Project Manager, compensation may be made on a time and materials basis. Such compensation shall be clearly documented in the Task Order as the schedule of payment. Project Manager shall be responsible for monitoring the Services performed by Contractor and appropriateness of the monthly invoice amount(s). Compensation shall be made for Services identified in the invoice that the Project Manager, or SFMTA's designee, in his or her sole discretion, concludes have been satisfactorily performed. The SFMTA will pay Contractor within 30 calendar days of receipt of the invoice, unless the SFMTA notifies Contractor that a dispute as to the invoice exists. In no event shall City be liable for interest or late charges for any late payments.

**3.4.1 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by

City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

**3.4.2 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.4.3 Invoice Format.** Invoices furnished by Contractor under this Agreement shall be in a form acceptable to the Controller and City, and shall include a unique invoice number. Contractor shall submit invoices for all allowable charges incurred in the performance of each Task Order. Contractor shall submit no more than one invoice in a month for each Task Order, and each invoice shall contain the following information:

- a. Contract number;
- b. Task Order number;
- c. Description of the work performed or Services rendered;
- d. Name, position, fully burdened hourly billing rate as set forth in Appendix B, dates and hours worked of employee(s) whose labor is invoiced;
- e. Other direct costs/out-of-pocket expenses itemized and with receipts showing the corresponding order of itemization;
- f. Subcontractor costs supported by invoice itemization in the same format as described above;
- g. Total costs;
- h. Completed SFMTA Task Order Invoice Cover Sheet; and
- i. Payroll records substantiating all labor charges for Contractor and all Subcontractors shown on the invoice.

**3.4.4 SBE Payment .** Contractor must submit all required payment forms to enable CCO to monitor Contractor's compliance with the SBE subcontracting commitments in this Agreement. Contractor shall pay its SBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the SBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required payment forms. Failure to submit all required payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a required forms to verify its payments to SBE subcontractors

### **3.4.5 Getting Paid for Goods and/or Services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

### **3.5 Grant-Funded Contracts.**

**3.5.1 Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

**3.5.2 FTA Requirements.** The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Appendix D are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

**3.6 Audit and Inspection of Records.** Contractor shall maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Services. Contractor shall permit the City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this subsection. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.7 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set

forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A, “Scope of Services.” Officers and employees of the City are not authorized to request, and the City is not required to reimburse Contractor for, services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, “Modification of this Agreement.” Contractor shall provide high quality Deliverables that shall require minimal revisions by SFMTA. Contractor shall adhere to the quality assurance guidelines set forth in Appendix C, “SFMTA Contractor Checklist for Document Submittals,” and respond fully and promptly to requests for revisions to initial submittals from the City in order to finalize documents.

**4.2 Priority of Documents.** All requirements of the RFP and the representations made in the Proposal that are not in conflict with provisions of this Agreement are incorporated by reference and made an integral part of this Agreement as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP or Proposal shall control. In case of conflict between the RFP and the Contractor’s/Contractor’s Proposal, the RFP shall govern. Documents listed as Appendices to this Agreement are incorporated by reference as though fully set forth herein.

**4.3 Information and Data.** Contractor shall request in writing any information and data it requires to prepare proposals for or perform the Services described in each Task Order. Contractor shall identify the timing and priority in which this information and data will be required. The Parties shall reach agreement as to the availability and delivery time for this data and information during the Proposal phase for each Task Order.

**4.4 Presentations.** If requested by City, Contractor shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.

**4.5 Task Order Requirements.** The SFMTA will define the requirements of each Task Order. The Parties will agree on the scope of Services, cost, and estimated time to perform each Task Order before Contractor starts work on the Task Order.

**4.5.1 Scope of Services.** The SFMTA will prepare the scope of Services and expected time of completion for each Task Order, and send the scope of Services to Contractor with a written request for a Proposal for the performance of the Task Order.

**4.5.2 Contractor Proposal.** Contractor shall prepare and submit a Proposal for each Task Order showing:

(a) A work plan that includes a detailed description by task of the Services to be performed and the means and methods that will be used to perform them;

(b) A schedule by task and Deliverable, including key milestones and/or critical path Deliverables;

(c) A list of Contractor's personnel and Subcontractors (in accordance with Appendix B) assigned to each part of the Services along with: (1) a resume indicating why such personnel are qualified to perform the Services; and (2) a narrative describing the prior experience of personnel and Subcontractors in performing work similar to the Services;

(d) A detailed cost estimate for each task or Deliverable showing:

(i) Estimated hours and hourly rates by position as listed in Appendix B for both Contractor and Subcontractor personnel. Labor hours for preparing monthly invoices or filling out required SBE forms will not be allowed; additional Subcontractor program management labor hours by Contractor will not be allowed. Overtime labor hours will not be allowed without prior written approval from the Project Manager. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

(ii) Estimated reasonable out-of-pocket expenses. Contractor may charge a fixed percentage mark-up for out-of-pocket expenses as set forth in section 3.3.2(d) of this Agreement. All expenses must be pre-approved in writing by the Project Manager.

**4.5.3 Negotiation of Cost.** The Project Manager will review the Proposal and negotiate for each Task Order either a lump-sum price per task or Deliverable, or number of hours per task or Deliverable, as described in Section 3.3.1.

**4.5.4 Record of Negotiations.** The Project Manager will document the negotiations and any agreement in a record of negotiations.

**4.5.5 Subcontracting Goals.** Upon completion of negotiations for each Task Order, Contractor shall provide Project Manager a memo describing the proposed SBE goal associated with the Task Order. The memo shall include a table that lists: (1) all firms performing Services under the Task Order; (2) whether the firm is a SBE, (3) the dollar value



and percentage of work attributed with each firm, and (4) the overall calculated SBE goal for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's SBE goal memo, approve or deny the goal, and issue a memo to file by CMD. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in this Agreement. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall SBE goal set forth in the Agreement.

**4.5.6 Controller Certification.** The City will request certification from the Controller that adequate funds are available to proceed with the Task Order as agreed.

**4.5.7 Notice to Proceed.** After the certification of each Task Order, a Purchase Order will be issued by the City, and the Project Manager will send to Contractor a written NTP and Task Order number. Contractor shall use the Task Order number and Purchase Order when submitting invoices to the City for payment. Contractor shall not commence work under any Task Order until it receives a corresponding Purchase Order and written NTP from the Project Manager.

**4.5.8 Changes.** Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of Services of the Task Order(s). If there is a material change in the scope of work of a task, then a proposal, negotiations, and record of negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a Task Order.

**4.5.9 Failure to Agree on Terms of Task Order.** If the Parties do not reach agreement on the terms of any Task Order, the SFMTA may either cancel the Task Order and have the Services performed by other available sources, or may direct the Contractor to proceed with the Task Order under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances shall Contractor refuse to undertake a City-ordered task.

**4.6 Personnel and Key Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's SFMTA-authorized Subcontractors) to perform the Services. Contractor shall comply with City's reasonable requests regarding assignment and removal of personnel, but all personnel, including those assigned at City's request, shall be supervised Contractor. Contractor shall commit adequate resources to allow timely completion within the set forth in the corresponding Task Order. Contractor agrees that the following personnel (Key Personnel) shall be committed and assigned to provide Services under this Agreement to the level required by SFMTA for the term of the Agreement and shall also be staffed at Contractor's local offices within the San Francisco Bay Area for all such time:

Rochelle Germano, Circlepoint  
Ivy Morrison, Circlepoint  
Nguyen Pham, Circlepoint

Contractor shall advise SFMTA immediately any time one of the Key Team Members deviates from its committed role or time on the Task Order (e.g., is assigned to another project). SFMTA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

**4.7 Current Workload and Available Resources.** Contractor covenants that its current workload and the workload of its Subcontractor will not affect the commencement and the progress of the Services performed under this Agreement. Contractor shall have all the necessary professional, technical and support personnel, including those of the Subcontractors, available, ready and mobilized to perform the Services within two weeks of the receipt of NTP on a particular Task Order. In addition, Contractor shall make good faith efforts to execute all applicable Subcontractors within three weeks of NTP. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

**4.8 Transmittal of Deliverables.** When requested by the Project Manager, and after completion of each task or Deliverable, Contractor shall transmit to the SFMTA all work product (duplicates and originals) produced or accumulated in the course of its and its Subcontractors' work on this Agreement. Contractor's project manager and Key Personnel shall have thoroughly reviewed and approved all work product and signed off as such prior to transmitting them to Agency.

**4.9 Reserved (Reproduction of Work Product).**

**4.10 SFMTA's Responsibilities Regarding Deliverables.** The SFMTA shall review and comment on Deliverables generally within 14calendar days of receipt by the SFMTA. The SFMTA and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the approved Task Order. The SFMTA's review and comments of Deliverables shall in no way relieve Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the SFMTA relieve the Contractor of its independent responsibility to provide submittals and Deliverables in full compliance with local, state and federal codes, regulations and standards.

If Contractor considers certain SFMTA review comments or directives, either written or oral, to require work efforts not included in the approved Scope of Services for each Task Order, the Contractor shall provide the SFMTA with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.8 above.

**4.11 Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the

name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes approval of the Subcontractor(s) listed below.

- a) Fall Line
- b) Square One
- c) Daniller
- d) InterEthnica

#### **4.12 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

**4.12.1 Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact

Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.12.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

**4.13 Assignment.** The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

**4.14 Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties." All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

5.1.4 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.6 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.7 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and Subcontractors.

5.1.8 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, contractors and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent

rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT AMOUNT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

**6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

7.1 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and

therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by SFMTA.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At SFMTA's direction, assigning to SFMTA any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that SFMTA designates to be completed prior to the date of termination specified by SFMTA.



(f) Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which SFMTA has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to SFMTA an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to SFMTA, and any other appropriate credits to SFMTA against the cost of the Services or other work.

8.1.4 In no event shall SFMTA be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, SFMTA may deduct: (i) all payments previously made by SFMTA for Services covered by Contractor's final invoice; (ii) any claim which SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and SFMTA's

estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 SFMTA's payment obligation under this Section shall survive termination of this Agreement.

## **8.2 Termination for Default; Remedies.**

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

|           |   |
|-----------|---|
| 3.7       | Submitting False Claims.  |
| 4.13      | Assignment  |
| Article 5 | Insurance and Indemnity   |
| Article 7 | Payment of Taxes  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 10.11     | Alcohol and Drug-Free Workplace                                   |
| 11.10     | Compliance with Laws  |

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement

or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

**8.3 Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

|           |   |
|-----------|---|
| 3.4.1     | Payment Limited to Satisfactory Services                          |
| 3.5.1     | Grant Funded Contracts - Disallowance                             |
| 3.6       | Audit and Inspection of Records                                   |
| 3.7       | Submitting False Claims   |
| Article 5 | Insurance and Indemnity   |
| 6.1       | Liability of City   |
| 6.3       | Liability for Incidental and Consequential Damages                |
| Article 7 | Payment of Taxes  |
| 8.1.6     | Payment Obligation  |
| 9.1       | Ownership of Results  |
| 9.2       | Works for Hire  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 11.6      | Dispute Resolution Procedure                                      |
| 11.7      | Agreement Made in California; Venue                               |
| 11.8      | Construction  |

|       |                      |
|-------|----------------------|
| 11.9  | Entire Agreement     |
| 11.10 | Compliance with Laws |
| 11.11 | Severability         |

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

## **Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor’s copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City’s prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at [www.sfgov.org](http://www.sfgov.org) under “Government.”

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

**10.4 Nondisclosure of Private, Proprietary or Confidential Information.**

10.4.1 If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

10.4.2 In the performance of Services, Contractor may have access to City’s proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

**10.5 Nondiscrimination Requirements**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

## **10.6 Small Business Enterprise Program.**

**10.6.1 General.** The SFMTA is committed to a Small Business Enterprise Program (SBE Program) for the participation of SBEs in contracting opportunities. In addition, the Contractor must comply with all applicable federal regulations regarding Small Business Enterprise (SBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement. More information on federal SBE requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

**10.6.2 Compliance with SBE Program.** Contractor shall comply with the SBE provisions contained in Appendix F attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Contractor to comply with any of these requirements shall be deemed a material breach of this Agreement.

**10.6.3 Non-Discrimination in Hiring.** Pursuant to City and SFMTA policy, Contractor is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure non-discrimination in Contractor's employment practices.

**10.7 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

**10.9 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or Subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering,

purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701)

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**10.12 Reserved. (Slavery Era Disclosure)**

**10.13 Reserved. (Working with Minors)**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions**

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor’s obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the

applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Reserved. (Public Access to Nonprofit Records and Meetings)**

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)**

**10.18 Reserved. (Preservative Treated Wood Products)**

## **Article 11 General Provisions**

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Deanna Desedas  
Marketing and Communications Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
[Deanna.desedas@sfmta.com](mailto:Deanna.desedas@sfmta.com)

OR

Amber Vasché  
Sustainable Streets Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
[Amber.vasche@sfmta.com](mailto:Amber.vasche@sfmta.com)

To Contractor: Scott Steinwert  
President and CEO



1814 Franklin Street, Suite 1000  
Oakland, CA 94612

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

**11.2 Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

**11.3 Reserved. (Payment Card Industry (PCI) Requirements)**

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of

the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.9 Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated September 14, 2016. The RFP and Contractor's proposal

are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

## **Article 12 MacBride Principles And Signature**

**12.1 MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

## **Article 13 Large Vehicle Driver Safety Training Requirements**

13.1 Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

13.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

|  |  |
|--|--|
| <p><b>CITY</b></p> <p><b>San Francisco<br/>Municipal Transportation Agency</b></p> <hr/> <p>Edward D. Reiskin<br/>Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____<br/>Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera<br/>City Attorney</p> <p>By: _____<br/>Isidro A. Jiménez<br/>Deputy City Attorney</p> | <p><b>CONTRACTOR</b></p> <p><b>Circlepoint</b></p> <hr/> <p><b>Scott Steinwert<br/>President and CEO<br/>1814 Franklin Street, Suite 1000<br/>Oakland, CA 94612</b></p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 15081</p> |
|--|--|

**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- C: Contractor Checklist for Document Submittals
- D: U.S. DOT Federal Requirements for Personal Services Contracts
- E: Small Business Enterprise (SBE) Information (Professional Services Insert)

## **Appendix A Scope of Services**

### **I. Policy Context**

Contractor shall use the SFMTA's Public Outreach and Engagement Team Strategy (POETS) as guidance in preparing strategies, engagements and Deliverables that are consistent with the SFMTA's standards below. All Task Orders are in place to help ensure the Project Managers meet the needs of community stakeholders while supporting the SFMTA's key policies, including but not limited to:

- a. SFMTA FY 2013-18 Strategic Plan:  
<https://www.sfmta.com/sites/default/files/pdfs/FY%202013%20-%20FY%202018%20SFMTA%20Strategic%20Plan.pdf>
- b. Transit First Policy (SF Charter, Article VIIA, SEC. 8A.115):  
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativencode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativencode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- c. Public Outreach & Engagement Team Strategy (POETS) see Appendix H
- d. SFMTA Brand Standards see Appendix I
- e. Complete Streets Policy (SF Public Works Code, Article II, SEC. 2.4.13):
- f. [http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativencode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativencode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- g. Vision Zero Goal <http://visionzerosf.org/>
- h. Better Streets Plan: <http://www.sfbetterstreets.org/>
- i. Bicycle Strategy [https://www.sfmta.com/sites/default/files/BicycleStrategyFinal\\_0.pdf](https://www.sfmta.com/sites/default/files/BicycleStrategyFinal_0.pdf)
- j. Pedestrian Strategy <http://archives.sfmta.com/cms/rpedmast/documents/1-29-13PedestrianStrategy.pdf>
- k. Walk First Program <http://walkfirst.sfplanning.org/>

### **II. Scope of Services**

#### **A. General Description of Work**

Contractor will generally support SFMTA project teams with planning, crafting and delivering best practices, and culturally competent outreach and engagement with stakeholder communities and the public at-large. Depending on the needs of the SFMTA and project team, a Task Order may include a request for comprehensive services for a project – from strategy/planning to execution and evaluation – or be limited to specific services or phases of the project.

## B. Specific Tasks

Specific work may include, but is not limited to, the following:

- 1) Planning for Public Outreach and Engagement
  - a) Create effective public participation plans that account for project requirements, funding needs, and other related SFMTA projects. Contractor will work with Project Managers to develop all necessary planning as outlined by POETS for the assigned project. Plans must be consistent with the POETS and utilize industry best practices in public participation, such as those developed by the International Association for Public Participation (IAP2).
  - b) Develop communications assessments that consider, but are not limited to, the following elements:
    - i) Project objectives, goals, and requirements
    - ii) Key stakeholders and project impacts by stakeholder
    - iii) Communications and outreach priorities
    - iv) Effectiveness metrics and methods of evaluation
    - v) Timelines for outreach in coordination with project planning, environmental clearance, design, construction, and evaluation stages, as well as public hearings, SFMTA Board meetings, scoping hearings, or other required Federal, State or local approvals.
  - c) Develop outreach and communication plans that support project goals and objectives for public participation plans.
    - i) Create a comprehensive communications and outreach strategy that engages diverse stakeholders (including people left out of primary stakeholder groups, such as merchant and neighborhood associations), other affected parties and the public-at-large.
    - ii) Outline communications and outreach tactics through key project phases.
    - iii) Identify opportunities for early outreach and engagement.
    - iv) Develop a toolkit of customized approaches to engage stakeholders on the project.
    - v) Compile a customized stakeholder contact list.
    - vi) Outline key messages.
    - vii) Identify coaching and training needs for Project Manager and staff, including media training, active listening, facilitation and mediation, negotiations, and handling difficult people and situations.

## 2) Implementation of Public Outreach and Engagement

- a) Assist with the implementation of outreach meetings
  - i) Schedule and reserve venues and provide logistical support for outreach meetings, inter- and intra-agency meetings, briefings, outreach at standing community events, tours and site visits, including transportation access, presentation set-up, sign-in, materials production, and other duties as assigned.
  - ii) Ensure broad awareness among relevant audiences of scheduling and content for stakeholder and outreach meetings.
  - iii) Develop presentations (e.g., PowerPoint) and presentation boards for meetings.
  - iv) Provide meeting facilitation.
  - v) Record meeting minutes, transcribe audio visual recordings, and draft meeting debriefs.
  - vi) Track meeting attendance.
  
- b) Collect and manage stakeholder engagement and feedback
  - i) Conduct and facilitate formal and informal focus groups.
  - ii) Design and administer surveys using different formats, including online, phone, intercept, and in-person interviews.
  - iii) Hold design charrettes.
  - iv) Solicit on-site, in-person feedback.
  - v) Conduct balloting or other voting mechanisms.
  - vi) Set up and monitor hotlines, including working with 311 staff to triage project-related calls; create new hotlines, as appropriate.
  - vii) Aggregate feedback to allow for detailed reporting and trend analysis.
  - viii) Prepare detailed outreach history summaries in preparation for legislative action or completion of project community phase, including:
    - (1) Reports documenting all public engagement activities
    - (2) Photographs from engagement events
    - (3) Compilation of main engagement themes (as described above)
    - (4) Counts and analysis of the number of individuals and stakeholder groups participating
  - ix) Identify and procure specific collection and measurement tools, as needed.
  
- c) Maintain stakeholder contacts and correspondence
  - i) Monitor, track and provide follow-up responses to constituent correspondence.
  - ii) Manage stakeholder concerns about scheduling meetings, logistics, and notification protocol.
  - iii) Update and maintain project stakeholder contact database, including constituents who are on- and offline.

- iv) Develop expanded stakeholder mailing lists for mailings and email blasts to reach a broad public audience.
- 3) Design and Development of Communications Materials
- a) Collateral Materials
    - i) Following the SFMTA’s brand standards, write and design culturally relevant project collateral materials, such as fact sheets, mailers, reports and presentation decks, and templates using maps, infographics, diagrams, renderings, illustrations and photographs.
    - ii) Translate materials for non-English language speakers on request.
    - iii) Ensure collateral formats are compliant with ADA accessibility standards.
  - b) Digital Assets
    - i) Assist in development and implementation of digital communications to support web pages, emails, blogs and social media.
    - ii) Draft project information for websites and for social media.
    - iii) Ensure digital assets are compliant with ADA accessibility standards.
    - iv) Provide social media monitoring services.
  - c) Video Production
    - i) Write, produce and edit videos that increase public understanding of project.
    - ii) Develop public dissemination plan for videos.
    - iii) Translate videos for non-English language speakers on request.
  - d) Miscellaneous Items
    - i) Develop customized give-away materials (i.e., “swag”) that support public interest and engagement.
    - ii) Procure miscellaneous materials and supplies for meetings and presentations.



**Appendix B  
Calculation of Charges**

Per Section 3.3.2, in addition to the rates shown below, Contractor may charge City a 5% markup on Subcontractor labor. Contractor shall itemize the markup in every invoice

| <b>Position</b>         | <b>Unburdened Hourly Rate</b> | <b>Audited Overhead Rate</b> | <b>Fixed Contractor Fee (Cap)</b> | <b>Not-to-Exceed Fully Burdened Hourly Rate</b> |
|-------------------------|-------------------------------|------------------------------|-----------------------------------|---|
| <b>Circlepoint</b>      |                               |                              |                                   |   |
| Communications Director | \$ 62.50                      | 187.72%                      | 10.0%                             | \$ 197.81                                       |
| Project Director        | \$ 62.30                      | 187.72%                      | 10.0%                             | \$ 197.17                                       |
| Principal               | \$ 69.51                      | 187.72%                      | 10.0%                             | \$ 220.00                                       |
| Sr Project Associate    | \$ 34.66                      | 187.72%                      | 10.0%                             | \$ 109.70                                       |
| Sr Art Director         | \$ 53.00                      | 187.72%                      | 10.0%                             | \$ 167.74                                       |
| Sr Graphic Designer     | \$ 36.28                      | 187.72%                      | 10.0%                             | \$ 114.82                                       |
| Sr Web Designer         | \$ 37.24                      | 187.72%                      | 10.0%                             | \$ 117.86                                       |
| Web Designer            | \$ 27.00                      | 187.72%                      | 10.0%                             | \$ 85.45  |
| Graphic Designer        | \$ 33.00                      | 187.72%                      | 10.0%                             | \$ 104.44                                       |
| Project Manager         | \$ 39.90                      | 187.72%                      | 10.0%                             | \$ 126.28                                       |
| Project Associate       | \$ 27.65                      | 187.72%                      | 10.0%                             | \$ 87.51  |
| Project Coordinator     | \$ 24.76                      | 187.72%                      | 10.0%                             | \$ 78.36  |
| Admin                   | \$ 35.96                      | 187.72%                      | 10.0%                             | \$ 113.81                                       |
| Copies (B/W)            |                               |                              |                                   | \$ 0.06-0.25/page                               |
| Copies (Color)          |                               |                              |                                   | \$ 0.50-1.75/page                               |
| Faxes                   |                               |                              |                                   | \$ 0.60/page                                    |
| Postage/Phone           |                               |                              |                                   | At cost   |
| Online surveys          |                               |                              |                                   | \$ 20 each                                      |
| Eblasts                 |                               |                              |                                   | \$ 14 each                                      |
| Mileage                 |                               |                              |                                   | GSA rate  |
| Web hosting             |                               |                              |                                   | \$ 300/year                                     |
| Web domain              |                               |                              |                                   | \$ 15/year                                      |
| Vendor services         |                               |                              |                                   | Cost + markup                                   |

| <b>Position</b>               | <b>Unburdened Hourly Rate</b>   | <b>Audited Overhead Rate</b> | <b>Fixed Contractor Fee (Cap)</b> | <b>Not-to-Exceed Fully Burdened Hourly Rate</b> |
|-------------------------------|---|------------------------------|-----------------------------------|---|
| <b>Fall Line</b>              |   |                              |                                   |   |
| President                     | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$ 220.00                                       |
| <b>Square One</b>             |   |                              |                                   |   |
| Principal                     | \$69.00   | 138.80%                      | 10%                               | \$ 181.25                                       |
| Senior Production Artist      | \$46.00   | 138.80%                      | 10%                               | \$ 120.83                                       |
| <b>Daniller</b>               |   |                              |                                   |   |
| President                     | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$ 216.00                                       |
| Associate Principal           |   |                              |                                   | \$ 185.00                                       |
| Senior Outreach Associate     |   |                              |                                   | \$ 132.00                                       |
| Junior Outreach Associate     |   |                              |                                   | \$ 105.00                                       |
| Graphic Designer              |   |                              |                                   | \$ 120.00                                       |
| <b>InterEthnica</b>           |   |                              |                                   |   |
| Principal/Cultural Contractor | \$73.71   | 85%                          | 10%                               | \$ 150.00                                       |
| Account Manager               | \$61.43   | 85%                          | 10%                               | \$ 125.00                                       |
| Project Manager               | \$61.43   | 85%                          | 10%                               | \$ 125.00                                       |
| Graphic Designer              | \$61.43   | 85%                          | 10%                               | \$ 125.00                                       |
| Illustrator                   | \$50.00   | 85%                          | 10%                               | \$ 101.75                                       |
| Typesetter                    | \$46.68   | 85%                          | 10%                               | \$ 95.00  |
| Outreach Staff                | \$36.86   | 85%                          | 10%                               | \$ 75.01  |
| Outreach Lead                 | \$46.68   | 85%                          | 10%                               | \$ 95.00  |
| Translator                    | \$50.00   | 85%                          | 10%                               | \$ 101.75                                       |
| Editor                        | \$50.00   | 85%                          | 10%                               | \$ 101.75                                       |
| Senior Interpreter            | \$90.90   | 85%                          | 10%                               | \$ 184.99                                       |
| Interpreter                   | \$85.00   | 85%                          | 10%                               | \$ 172.98                                       |
| Researcher                    | \$73.71   | 85%                          | 10%                               | \$ 150.00                                       |
| Assistant Researcher          | \$46.68   | 85%                          | 10%                               | \$ 95.00  |

| <b>Position</b>               | <b>Unburdened Hourly Rate</b> | <b>Audited Overhead Rate</b> | <b>Fixed Contractor Fee (Cap)</b> | <b>Not-to-Exceed Fully Burdened Hourly Rate</b> |
|-------------------------------|-------------------------------|------------------------------|-----------------------------------|---|
| <b>InterEthnica continued</b> |                               |                              |                                   |   |
| Intern                        | \$25.00                       | 85%                          | 10%                               | \$ 50.88  |
| Meeting Assistants            | \$25.00                       | 85%                          | 10%                               | \$ 50.88  |
| Copywriter                    | \$65.00                       | 85%                          | 10%                               | \$ 132.28                                       |
| Photographer                  | \$90.00                       | 85%                          | 10%                               | \$ 183.15                                       |
| Sound Technician              | \$75.00                       | 85%                          | 10%                               | \$ 152.63                                       |
| Voice over Talent             | \$61.43                       | 85%                          | 10%                               | \$ 125.00                                       |
| Administration                | \$37.50                       | 85%                          | 10%                               | \$ 76.29  |

**InterEthnica Audio Translation Equipment:**

Headset \$18 per head set

Translation transmitter \$125 per day

Delivery, set-up and equipment test \$125 per event.

On site audio technician available will be billed at \$125 per hour.

**InterEthnica Translation Charges:**

Translation minimum charge of \$125 per language.

This applies to documents that contain a word count of 200 or less.

\*The exception to this rule is advertising and slogan translation, which is charged at an hourly rate of \$125.

Translation rates are \$0.27 to \$0.40 per word depending on the language and the complexity of the source text.

Spanish - \$0.27 per word

Hmong - \$0.32 per word

Arabic - \$0.30 per word

Russian - \$0.32 per word

Chinese - Mandarin and Cantonese - \$0.30 per word

Vietnamese - \$0.32 per word

Tagalog - \$0.35 per word

Russian - \$0.30 per word

Japanese - \$0.32 per word

Korean - \$0.32 per word

Punjabi - \$0.32 per word

**Appendix C**  
**Contractor Checklist for Document Submittals**

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)**

Task Order Number: \_\_\_\_\_

Task Order Title: \_\_\_\_\_

This checklist must be filled in by the contractor and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

1. Document is edited for grammatical and typographical errors, clarity, and format.
2. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
3. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
4. All document sections, tables, figures, appendices, etc. are submitted.
5. Footnotes are on same page as the reference (no endnotes).
6. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
7. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
8. Data in tables and figures are cross-checked with text.
9. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
10. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
11. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
12. All document background reports are finalized and included with the submittal packet.
13. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Contractor at the Task Order level:
  - a. Date / Times;

- b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
- c. Name and contact information of contractor performing the count effort;
- d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
  - i. For Machine Counts: Street Name\_Direction of Approach\_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)
  - ii. For Turning Movement Counts by Hand: Street Name\_Cross Street\_Time of Day (i.e., LAGUNA CLAY PM);
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
- f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
- g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

**Notes:**

Firm Name: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix D

### FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

#### I. DEFINITIONS

- A. **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. **Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.
- C. **Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.
- D. **Federal Transit Administration (FTA)** is an operating administration of the U.S. DOT.
- E. **FTA Directive** includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.
- F. **Grant Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- G. **Government** means the United States of America and any executive department or agency thereof.
- H. **Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.
- I. **Recipient** means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.
- J. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- K. **Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.
- L. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

M. **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

## **II. 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 the City 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.

## **III. ACCESS TO RECORDS**

- A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

## **IV. DEBARMENT AND SUSPENSION**

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

## **V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

- A. The City 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 the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **VI. 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, 41 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. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR 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 CFR 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.

## **VII. DBE/SBE ASSURANCES**

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or subcontractor 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 C.F.R. Part 26 in the



award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor 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 SFMTA deems appropriate.

**VIII. PATENT RIGHTS** (*applicable to contracts for experimental, research, or development projects financed by FTA*)

- A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.
- B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**IX. RIGHTS IN DATA AND COPYRIGHTS** (*Applicable to contracts for planning, research, or development financed by FTA*)

- A. **Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
  - 1. **Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  - 2. **Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to

use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:

- a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
- b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.

**3.FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City’s use the costs of which are financed with Federal transportation funds for capital projects.

**4.Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

**5.Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

**6.Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

**7.Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for

experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

- C. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- D. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- X. **CONTRACT WORK HOURS AND SAFETY STANDARDS** (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)
- A. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. **Withholding for unpaid wages and liquidated damages** - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime

contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

#### **XI. ENERGY CONSERVATION REQUIREMENTS**

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.

#### **XII. CLEAN WATER REQUIREMENTS** (*applicable to all contracts in excess of \$100,000*)

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

#### **XIII. CLEAN AIR** (*applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any yea.*)

- A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **XIV. PRIVACY**

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, 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 Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. 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.

#### **XV. DRUG AND ALCOHOL TESTING**

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its

subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

**XVI. TERMINATION FOR CONVENIENCE OF CITY** (*required for all contracts in excess of \$10,000*)

See Agreement Terms and Conditions.

**XVII. TERMINATION FOR DEFAULT** (*required for all contracts in excess of \$10,000*)

See Agreement Terms and Conditions.

**XVIII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

**XIX.**

- 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 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, 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.

**XX. FLY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of

compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**XXI. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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

**XXII. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS** *(applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator)*

A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.
2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative

Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.
- B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

**XXIII. NATIONAL ITS ARCHITECTURE POLICY** (*Applicable to contracts for ITS projects*)

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

**XXIV. TEXTING WHILE DRIVING; DISTRACTED DRIVING**

Consistent with Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

**XXV. SEAT BELT USE**

In compliance with Executive Order 13043 "Increasing Seat Belt Use in the United States", April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.



## **Appendix E**

### **SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

#### **SBE REQUIREMENTS**

##### **Architects, Engineers, Planners, and Environmental Scientists and Other Professional Services**

### **I. POLICY**

The San Francisco Municipal Transportation Agency (SFMTA), recipient of federal financial assistance from the Federal Transit Administration (FTA), is committed to and has adopted, a Small Business Enterprise (SBE) Program to implement the Disadvantaged Business Enterprise regulations in 49 C.F.R. Part 26 (the "Regulations"), issued by the Department of Transportation (DOT).

It is the policy of the SFMTA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to SFMTA's construction, procurement and professional services activities. To this end, SFMTA has developed procedures to remove barriers to SBE participation in the bidding and award process and to assist SBEs to develop and compete successfully outside of the SBE program. In connection with the performance of this contract, the Contractor will cooperate with SFMTA in meeting these commitments and objectives.

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or Subcontractor 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 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor 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 SFMTA deems appropriate.

#### **A. Applicability**

Pursuant to 49 C.F.R. Sections 26.3 and 26.21, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement an SBE Program in accordance with the Regulations. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by DOT federal financial assistance.

#### **B. Objectives**

The objectives of this program are to:

1. Remove barriers to SBE participation in the bidding, award and administration of SFMTA contracts;
2. Assist SBEs to develop and compete successfully outside of the Program;
3. Ensure that the Program is narrowly tailored in accordance with 49 C.F.R. Part 26;
4. Ensure that only SBEs meeting the eligibility requirements are allowed to participate as SBEs;
5. Identify business enterprises that are qualified as SBEs and are qualified to provide SFMTA with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. Develop communications programs and procedures which will acquaint prospective SBEs with SFMTA's contract procedures, activities and requirements and allow SBEs to provide SFMTA with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
7. Administer the Program in close coordination with the various divisions within SFMTA so as to facilitate the successful implementation of this Program.

### **C. Administration of Program**

The Director of Transportation is responsible for adherence to this policy. The DBE Liaison Officer (DBELO) shall be responsible for the development, implementation and monitoring of this program. It is the expectation of the Municipal Transportation Board of Directors and the Director of Transportation that all SFMTA personnel shall adhere to the provisions and the spirit of this program.

### **D. Prohibited Discrimination**

SFMTA shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the basis of (the fact or perception of a person's) race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

**E.** SFMTA shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals in the groups or categories or having the characteristics listed above.

**F.** SFMTA has signed the federal assurances regarding non-discrimination required under 49 C.F.R. Section 26.13. See III.D (Contract Assurances) for requirements of Contractor and Subcontractors.

## **II. DEFINITIONS**

Any terms used in SFMTA's SBE Program that are defined in 49 C.F.R. Section 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. An SBE is defined as follows:

**Small Business Enterprise (SBE):** An SBE is a for-profit, small business concern with a three-year average gross revenue not exceeding current SBA size standards appropriate for its type of work and is either verified eligible by the SFMTA or the State of California's Small Business Program with the Department of General Services, the California Unified Certification Program with a U.S. Department of Transportation recipient, or the City and County of San Francisco's LBE program with the Human Rights Commission.

## **III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS**

### **A. SBE Participation Goal**

A goal of 30 percent SBE participation has been established for this contract. This SBE goal will apply to the following types of contracts or scope of work in the contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

### **B. Determining the Amount of SBE Participation**

The SFMTA strongly encourages the prime contractor to make every good faith effort to include SBEs to perform meaningful work in all aspects of the projects. To accomplish this goal, the following guidance is provided:

#### **1. SBE Participation**

SBE participation includes contracts (other than employee contracts) with SBEs for any goods or services specifically required for the completion of the work under the

Agreement. An SBE may participate as a prime contractor/contractor, subcontractor/contractor, joint venture partner with a prime or contractor, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement.

**2. Function**

An SBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work. However, an SBE may contract out a portion of the work if it is considered to be a normal industry practice. If an SBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE shall be presumed not to be performing a commercially useful function.

**3. Determining the amount of SBE Participation**

SBE participation includes that portion of the contract work actually performed by a certified SBE with its own forces. An SBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by the contract.

An SBE's participation can only be counted if it is performing a commercially useful function.. An SBE is performing a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE is not responsible for at least 30 percent of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function.

The Contractor shall determine the amount of SBE participation for each SBE performing work on the contract in terms of both the total value of the work in dollars and the percentage of the total contract bid price. The Contractor shall also determine the total amount of SBE participation for the entire contract. The Contractor shall count SBE participation according to the following guidelines:

**a. SBE Prime Contractor**

Count the entire dollar amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE participation by the SBE Prime Contractor.

**b. SBE Subcontractor**

Count the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Contractor) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE subcontractor to another firm as SBE participation by said SBE subcontractor. If the work has been subcontracted to another SBE, it will be counted as SBE participation by that other SBE.

**c. SBE Joint Venture Partner**

Count the portion of the work that is performed solely by the SBE's forces or if the work is not clearly delineated between the SBE and the joint venture partner, count the portion of the work equal to the SBE's percentage of ownership interest in the joint venture.

**d. SBE Regular Dealer**

Count 60 percent of the costs of materials and supplies obtained from an SBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business (except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business). This applies whether an SBE is a prime contractor or subcontractor.

**e. Other SBEs**

Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from an SBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

**C. Submission of Certification for SBEs**

All firms wishing to receive credit for participation under the SFMTA's SBE Program must be certified as bona fide SBEs with the SFMTA. This requires either submission of: (1) the completed certification applications for either SBEs, DBEs, or LBEs, or (2) submission of the SFMTA's small business verification application. For information regarding where to obtain applications for these certifications, please contact the SFMTA Contract Compliance Office at:

San Francisco Municipal Transportation Agency  
Contract Compliance Office  
One South Van Ness Avenue, 6th floor  
San Francisco, California 94103

**D. Contract Assurances**

The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The Contractor and its subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. 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 the recipient deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

**E. Use of SBE Firms**

The Contractor shall use the specific SBEs listed to perform the work and supply the materials for which each is listed unless the Contractor obtains CCO's prior written consent. Unless prior written consent by CCO is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE.

**F. Substitution of Subcontractors and Suppliers**

The Contractor shall not terminate an SBE subcontractor or supplier for convenience and then perform the work with its own forces. Before requesting the termination and/or substitution of an SBE subcontractor, the Contractor must give notice in writing to the SBE subcontractor, with a copy to CCO, of its intent to request to terminate and/or substitute, and the reason for the request. The Contractor must give the SBE five days to respond to the notice and advise CCO and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Contractor's request should not be approved. CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the SFMTA Board of Directors.

When an SBE subcontractor is terminated as provided in this section, or fails to complete its work on the contract for any reason, the Contractor shall make good faith efforts to find another SBE subcontractor to substitute for the original SBE. These good faith efforts shall be directed at finding another SBE to perform at least the same amount of work under the contract as the SBE that was terminated, to the extent needed to meet the established SBE contract goal.

**G. Addition of Subcontractors and Suppliers**

The Contractor shall notify CCO prior to any addition of an SBE or non-SBE subcontractor or supplier to the project. Submit SBE SFMTA Form No. 4 for each new SBE subcontractor or supplier. Any new SBE subcontractor or supplier approved by CCO also must submit SFMTA SBE Form No. 5.

## **H. Prompt Payment to Subcontractors**

In accordance with SFMTA's SBE Program, no later than three days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors. Unless the prime contractor notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime contractor and the subcontractor. Within five working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractors.

Contractor may withhold retention from subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within 30 days of City's payment of retention to Contractor for satisfactory completion of all work required of a subcontractor, Contractor shall release any retention withheld to the subcontractor. Satisfactory completion shall mean when all the tasks called for in the subcontract with subcontractor have been accomplished and documented as required by City.

If the Contractor does not pay its subcontractor as required under the above paragraph, it shall pay interest to the subcontractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

## **IV. MONITORING AND COMPLIANCE**

### **A. SBE Records; Reporting Requirements**

The Contractor shall maintain records of all SBE participation in the performance of the contract including subcontracts entered into with certified SBEs and all materials purchased from certified SBEs.

The Contractor shall submit SBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Contractor shall submit a final summary SBE report to the CCO.

### **B. Noncompliance; Administrative Remedies**

SFMTA will implement appropriate mechanisms to ensure that its prime contractors and subcontractors comply with SBE Program regulatory requirements. SFMTA will apply legal and contractual remedies available under federal, state and local law.

SFMTA will also include a monitoring and enforcement mechanism to verify that the work committed to SBEs at contract award is actually performed by the SBEs. This mechanism will provide for a running tally of actual SBE attainments and include a provision ensuring that SBE participation is credited toward overall or contract goals only when payments are actually made to SBE firms.



**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Katz and Associates/Barbary Coast (Joint Venture)**

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**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Katz and Associates/Barbary Coast (JV)  
Contract No. SFMTA-2016-38/1 (LOCAL)**

This Agreement is made this 18<sup>th</sup> day of April, 2017, in the City and County of San Francisco, State of California, by and between Katz and Associates, 5440 Morehouse Drive, Suite 1000, San Diego, CA 92121, and Barbary Coast Consulting, 995 Market Street, 2<sup>nd</sup> Floor, San Francisco, CA 94103, a joint venture, (Contractor) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

**A.** The SFMTA wishes to contract with a qualified public relations firm for public outreach and engagement services to be provided on an as-needed basis.

**B.** The SFMTA issued a Request for Proposals (RFP) on July 29, 2016 and selected Contractor as the highest qualified scorer pursuant to the RFP.

**C.** The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 30%.

**D.** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.

**E.** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 41409-15/16 on 01/04/2016.

Now, THEREFORE, the Parties agree as follows:

**Article 1      Definitions**

The following definitions apply to this Agreement:

**1.1      Agreement:** This contract document and all referenced appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference.

**1.2      Award:** Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute this Agreement.

**1.3      City:** The City and County of San Francisco, a municipal corporation, acting by and through the SFMTA.

**1.4      CCO:** The Contract Compliance Office of the SFMTA.

- 1.5 CMD:** The Contract Monitoring Division of the City.
- 1.6 Contractor:** Katz and Associates/Barbary Coast (Joint Venture)
- 1.7 Days:** Unless otherwise designated, the word “Days” refers to working days of the City, which are generally Monday through Friday, excluding holidays. The use of the term “days,” “working days” or “business days” in this Agreement shall be synonymous.
- 1.8 Deliverables:** Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.
- 1.9 Director:** The Director of Transportation of the SFMTA or his/her designee.
- 1.10 Effective Date:** The date on which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.
- 1.11 Key Personnel:** The personnel named in Section 4.6.
- 1.12 Mandatory City Requirements:** Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.
- 1.13 Notice To Proceed (NTP):** A letter or email from the Project Manager notifying Contractor of the day when work is to commence under each Task Order,
- 1.14 Party(ies):** The City and Contractor, either collectively or individually.
- 1.15 Project Manager:** The designated SFMTA employee who will assume all duties and responsibilities to manage each Task Order.
- 1.16 Proposal:** The Contractor's written response to the RFP or a written request for a proposal for the performance of the Task Order, as the context requires.
- 1.17 Purchase Order:** A written order issued by the SFMTA to the Contractor, authorizing the start of work under each Task Order.
- 1.18 Request for Proposals (RFP):** The Request for Proposals for As-Needed Public Outreach and Engagement Services issued by the SFMTA on July 29, 2016.
- 1.19 San Francisco Municipal Transportation Agency (SFMTA):** The agency of the City with jurisdiction over surface transportation in San Francisco, as provided in the San Francisco Charter Article VIIIA.
- 1.20 Services:** The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, and further described by the Task Order, including all services, labor, supervision, materials, equipment, actions, and other requirements to be performed and furnished by Contractor under this Agreement.
- 1.21 Subcontractor:** Any firm under contract to Contractor for services under this Agreement.
- 1.22 Task Order:** A written directive from the SFMTA to Contractor to perform specified Services under this Agreement.

## **Article 2      Term of the Agreement**

**2.1** The term of this Agreement shall commence on the latter of: (i) April 18, 2017 or (ii) the Effective Date, and shall expire on April 18, 2019, unless earlier terminated as otherwise provided herein.

**2.2** The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

### **Article 3 Financial Matters**

**3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability, or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

### **3.3 Compensation.**

**3.3.1 Payment Amount** Contractor's compensation for the Services shall be based on either: (1) a negotiated lump-sum price per task or Deliverable (which includes all direct and indirect costs, wages and benefits, overhead, profit, and all other costs) for each Task Order; or (2) a negotiated number of hours per task or Deliverable using the hourly rates set



forth in Appendix B (Calculation of Charges) plus a fixed contractor fee, and subject to a total amount not to exceed. In no event shall the total amount of this Agreement for all Task Orders exceed two million five hundred thousand dollars (\$2,500,000).

**3.3.2 Method of Computing Hourly Compensation.** For Services paid for on an hourly basis, the SFMTA shall pay Contractor the applicable hourly rates plus fixed contractor fees in Appendix B, the sum of which equals the fully burdened hourly rates. The hourly rate shall be the sum of the applicable unburdened hourly rate and overhead rate shown in Appendix B. The fixed contractor fee shall cover profit, non-compensable overhead, and other operating costs. In cases where Contractor or a Subcontractor is a small LBE or sole proprietor without audited hourly rates, the Parties have negotiated the fully burdened hourly rates, inclusive of profit, non-compensable overhead, and other operating costs, set forth in Appendix B. Contractor's mark-up for managing Subcontractors shall be no more than 5% of the fully burdened hourly rate.

**(a) Unburdened Hourly Rates.** The unburdened hourly rates (i.e., gross wages or salaries paid to personnel that perform the Services) shown in Appendix B shall be fixed until 24 months after the Effective Date, and may be adjusted thereafter only if the City exercises its option to extend the term of the Agreement. Any adjustment to the hourly rates in Appendix B shall be negotiated by the Parties, except that no adjustment shall exceed the corresponding annual increase in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for All Urban Consumers. No hourly rate shall be adjusted without prior written approval of the SFMTA.

**(b) Overhead Rates.** The overhead rates shown for Contractor and each Subcontractor in Appendix B are estimates of actual overhead rates and may be adjusted after 24 months with prior written approval from the Director of Transportation. Contractor's and Subcontractors' combined unburdened hourly rates and overhead rates are subject to audit in compliance with Federal requirements.

**(c) Out-of-Pocket Expenses.** The SFMTA shall reimburse Contractor for Contractor's and Subcontractors' actual costs of approved out-of-pocket expenses. Compensation for materials and other approved out-of-pocket expenses, other than travel, shall be at direct cost, plus a mark-up not to exceed 5%. Compensation for travel-related expenses shall be at direct cost without mark-up. The mark-up for media buys shall not exceed 7%. The mark-up for media buys shall be applied by either the Contractor or Subcontractor, whichever is making the purchase, and shall not be combined with the 5% mark-up for other approved out-of-pocket expenses. All out-of-pocket expenses must be pre-approved in writing by the Project Manager. For travel expenses, airfare must be coach class only and reasonable; reservations must be made in a timely fashion to receive the lowest rate possible. Vehicle expenses for travel will only be reimbursed if the travel is outside of a 100-mile radius of the City. Payment for travel related costs shall not exceed U.S. General Services Administration (GSA) per diem and mileage rates. Legible receipts for all expenses, including travel, must

accompany the invoice, or City reserves the right to refuse reimbursement of expenses until receipts are provided.

**(d) Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile, and telecommunication expenses shall not be tracked or reimbursed separately as out-of-pocket costs. Contractor and Subcontractor personnel relocation costs and entertainment or personal expenses shall not be reimbursable under this Agreement. Office and field supplies/equipment expenses shall not be reimbursed unless Contractor demonstrates these supplies and equipment are out of the ordinary, necessary, and used exclusively to provide the Services. If the SFMTA determines that office and field supplies/equipment expenses out of the ordinary, necessary, and used exclusively to provide the Services, such expenses must be pre-approved in writing by the Project Manager. Vehicle expenses for travel within a 100-mile radius of the City will not be reimbursable.

**(e) Use of Public Transportation.** The City has a transit-first policy, and the SFMTA encourages Contractor and Subcontractors to use public transit in performance of the Services to the maximum extent possible. The SFMTA will closely review Contractor's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Taxicabs and hired cars are not considered public transit. The SFMTA reserves the right to refuse to reimburse travel expenses that are not in accordance with these policies.

**3.4 Payment.** Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Each Task Order shall include a schedule for payment of each task or Deliverable as agreed to by the Project Manager and Contractor. The schedule for payment shall clearly state when payment shall be made as either a one-time lump sum upon completion, or as a percentage or dollar amount per unit each month as defined in the Task Order. Under special circumstances, and upon pre-approval by the Project Manager, compensation may be made on a time and materials basis. Such compensation shall be clearly documented in the Task Order as the schedule of payment. Project Manager shall be responsible for monitoring the Services performed by Contractor and appropriateness of the monthly invoice amount(s). Compensation shall be made for Services identified in the invoice that the Project Manager, or SFMTA's designee, in his or her sole discretion, concludes have been satisfactorily performed. The SFMTA pay Contractor within 30 calendar days of receipt of the invoice, unless the SFMTA notifies Contractor that a dispute as to the invoice exists. In no event shall City be liable for interest or late charges for any late payments.

**3.4.1 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of

such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials, and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

**3.4.2 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of the City's withholding of payments as provided herein.

**3.4.3 Invoice Format.** Invoices furnished by Contractor under this Agreement shall be in a form acceptable to the Controller and City, and shall include a unique invoice number. Contractor shall submit invoices for all allowable charges incurred in the performance of each Task Order. Contractor shall submit no more than one invoice in a month for each Task Order, and each invoice shall contain the following information:

- a. Contract number;
- b. Task Order number;
- c. Description of the work performed or Services rendered;
- d. Name, position, fully burdened hourly billing rate as set forth in Appendix B, dates and hours worked of employee(s) whose labor is invoiced;
- e. Other direct costs/out-of-pocket expenses itemized and with receipts showing the corresponding order of itemization;
- f. Subcontractor costs supported by invoice itemization in the same format as described above;
- g. Total costs;
- h. Completed SFMTA Task Order Invoice Cover Sheet; and
- i. Payroll records substantiating all labor charges for Contractor and all Subcontractors shown on the invoice.

**3.4.4 LBE Payment.** Contractor must submit all required CMD payment forms to enable CCO to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment forms. Failure to submit all required CMD payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required CMD payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a CMD Form 9 Payment Affidavit verifying its payments to LBE subcontractors.

### **3.4.5 Getting Paid for Goods and/or Services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative; (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company; (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor); and (iv) the company's bank account information, including routing and account numbers.

### **3.5 Reserved (Grant-Funded Contracts)**

**3.6 Audit and Inspection of Records.** Contractor shall maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Services. Contractor shall permit the City to audit, examine, and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records, or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this subsection. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.7 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to

the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse Contractor for, services performed beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement." Contractor shall provide high quality Deliverables that shall require minimal revisions by SFMTA. Contractor shall adhere to the quality assurance guidelines set forth in Appendix C, "SFMTA Contractor Checklist for Document Submittals," and respond fully and promptly to requests for revisions to initial Submittals from the City in order to finalize documents.

**4.2 Priority of Documents.** All requirements of the RFP and the representations made in the Proposal that are not in conflict with provisions of this Agreement are incorporated by reference and made an integral part of this Agreement as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or the Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP or Proposal shall control. In case of conflict between the RFP and the Contractor's Proposal, the RFP shall govern. Documents listed as Appendices to this Agreement are incorporated by reference as though fully set forth herein.

**4.3 Information and Data.** Contractor shall request in writing any information and data it requires to prepare proposals for or perform the Services described in each Task Order. Contractor shall identify the timing and priority in which this information and data will be required. The Parties shall reach agreement as to the availability and delivery time for this data and information during the proposal phase for each Task Order.

**4.4 Presentations.** If requested by City, Contractor shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.

**4.5 Task Order Requirements.** The SFMTA will define the requirements of each Task Order. The Parties will agree on the scope of services, cost, and estimated time to perform each Task Order before Contractor starts work on the Task Order.

**4.5.1 Scope of Services.** The SFMTA will prepare the scope of Services and expected time of completion for each Task Order, and send the scope of Services to Contractor with a written request for a proposal for the performance of the Task Order.

**4.5.2 Contractor Proposal.** Contractor shall prepare and submit a proposal for each Task Order showing:

(a) A work plan that includes a detailed description by task of the Services to be performed and the means and methods that will be used to perform them;

(b) A schedule by task and Deliverable, including key milestones and/or critical path Deliverables;

(c) A list of Contractor's personnel and Subcontractors (in accordance with Appendix B) assigned to each part of the Services, along with (1) a resume indicating why such personnel or Subcontractors are qualified to perform the Services, and (2) a narrative describing the prior experience of personnel and Subcontractors in performing work similar to the Services;

(d) A detailed cost estimate for each task or Deliverable showing:

(i) Estimated hours and hourly rates by position as listed in Appendix B for both Contractor and Subcontractor personnel. Labor hours for preparing monthly invoices or filling out required LBE forms will not be allowed; additional Subcontractor program management labor hours by Contractor will not be allowed. Overtime labor hours will not be allowed without prior written approval from the Project Manager. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

(ii) Estimated reasonable out-of-pocket expenses. Contractor may charge a fixed percentage mark-up for out-of-pocket expenses as set forth in section 3.3.2(d) of this Agreement. All expenses must be pre-approved in writing by the Project Manager;

**4.5.3 Negotiation of Cost.** The Project Manager will review the Proposal and negotiate for each Task Order either a lump-sum price per task or Deliverable, or number of hours per task or Deliverable, as described in Section 3.3.1.

**4.5.4 Record of Negotiations.** The Project Manager will document the negotiations and any agreement in a record of negotiations.

**4.5.5 Subcontracting Goals** Upon completion of negotiations for each Task Order, Contractor shall provide Project Manager a memo describing the proposed LBE goal associated with the Task Order. The memo shall include a table that lists: (1) all firms performing Services under the Task Order; (2) whether the firm is a LBE; (3) the dollar value and percentage of work attributed with each firm; and (4) the overall calculated LBE goal for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's LBE goal memo, approve or deny the goal, and issue a memo to file by CMD. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in this Agreement. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall LBE goal set forth in the Agreement.

**4.5.6 Controller Certification.** The City will request certification from the Controller that adequate funds are available to proceed with the Task Order as agreed.

**4.5.7 Notice to Proceed.** After the certification of each Task Order, a Purchase Order will be issued by the City, and the Project Manager will send to the Contractor a written NTP and Task Order number. Contractor shall use the Task Order number and Purchase Order when submitting invoices to the City for payment. Contractor shall not commence work under any Task Order until it receives a corresponding Purchase Order and written NTP from the Project Manager.

**4.5.8 Changes.** Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of Services of the Task Order(s). If there is a material change in the scope of Services of a task, then a proposal, negotiations, and record of negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a Task Order.

**4.5.9 Failure to Agree on Terms of Task Order.** If the Parties do not reach agreement on the terms of any Task Order, the SFMTA may either cancel the Task Order and have the Services performed by other available sources, or direct Contractor to proceed with the Task Order under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances shall Contractor refuse to undertake a City-ordered task.

**4.6 Personnel and Key Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's SFMTA-approved Subcontractors) to perform the Services. Contractor shall comply with City's reasonable requests regarding assignment and removal of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the time set forth in the corresponding Task Order. Contractor agrees that the following personnel ("Key Personnel") shall be committed and assigned to provide services under this Agreement to the level required by SFMTA for the term of the Agreement and, excluding Lewis Michaelson, shall also be staffed at Contractor's local offices within the San Francisco Bay Area for all such time:

Amber Shipley, Barbary Coast  
Peter Lauterborn, Barbary Coast  
Gregory Parks, Katz & Associates  
Lewis Michaelson, Katz & Associates  
Nicolas Townes, Katz & Associates

Contractor shall advise SFMTA immediately any time one of the Key Team Members deviates from its committed role or time on the Task Order (e.g., is assigned to another

project). SFMTA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

**4.7 Current Workload and Available Resources.** Contractor covenants that its current workload and the workload of its Subcontractors will not affect the commencement and the progress of the Services performed under this Agreement. Contractor shall have all the necessary professional, technical, and support personnel, including those of the Subcontractors', available, ready and mobilized to perform the Services within two weeks of the receipt of NTP on a particular Task Order. In addition, Contractor shall make good faith efforts to execute all applicable Subcontracts within three weeks of NTP. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

**4.8 Transmittal of Deliverables.** When requested by the Project Manager, and after completion of each Task Order or Deliverable, Contractor shall transmit to the SFMTA all work product (duplicates and originals) produced or accumulated in the course of its and its Subcontractors' work on this Agreement. The Contractor's project manager and Key Personnel shall have thoroughly reviewed and approved all work product and signed off as such prior to transmitting them to SFMTA.

**4.9 Reserved (Reproduction of Work Product).**

**4.10 SFMTA's Responsibilities Regarding Deliverables.** The SFMTA shall review and comment on Deliverables within 14 calendar days of receipt by SFMTA. The SFMTA and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the approved Task Order. The SFMTA's review and comments of Contractor submittals shall in no way relieve the Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the SFMTA relieve the Contractor of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

If Contractor considers certain SFMTA review comments or directives, either written or oral, to require work efforts not included in the approved Scope of Services, the Contractor shall provide SFMTA with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.8 above.

**4.11 Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes its approval of the Subcontractors listed below.



- a) 51 West Media
- b) Caribou Public Relations, Inc.
- c) JBR Partners Inc.
- d) lowercase production
- e) Fairbank, Maslin, Maullin, Metz & Associates, Inc. (FM3 Research)
- f) Greenway Consulting
- g) RDJ Enterprises LLC
- h) The Participation Company LLC
- i) InterEthnica Inc.
- j) Seasons Productions
- k) Bang the Table USA LLC

**4.12 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

**4.12.1 Independent Contractor.** For the purposes of this Article 4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this section.

Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.12.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

**4.13 Assignment.** The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

**4.14 Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(i) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or personal information or other personally identifying information, stored or transmitted in electronic form;

(ii) Network security liability arising from the unauthorized access to, use of, or tampering with, computers or computer systems, including hacker attacks; and

(iii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

**5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:**

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

**5.1.3** All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties." All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

**5.1.4** Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

**5.1.5** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

**5.1.6** Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

**5.1.7** The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and Subcontractors.

**5.1.8** If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents, and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or

otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, contractors and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT AMOUNT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

**6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

**7.1** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

**7.2** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

**7.2.1** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

**7.2.2** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

**7.2.3** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

**7.2.4** Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for

possessory interests that are imposed by applicable law.

## **Article 8      Termination and Default**

### **8.1      Termination for Convenience**

**8.1.1** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

**8.1.2** Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

**(a)** Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by SFMTA.

**(b)** Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

**(c)** At SFMTA's direction, assigning to SFMTA any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

**(d)** Subject to SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

**(e)** Completing performance of any Services that SFMTA designates to be completed prior to the date of termination specified by SFMTA.

**(f)** Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which SFMTA has or may acquire an interest.

**8.1.3** Within 30 days after the specified termination date, Contractor shall submit to SFMTA an invoice, which shall set forth each of the following as a separate line item:

**(a)** The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to SFMTA, and any other appropriate credits to SFMTA against the cost of the Services or other work.

**8.1.4** In no event shall SFMTA be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

**8.1.5** In arriving at the amount due to Contractor under this Section, SFMTA may deduct: (i) all payments previously made by SFMTA for Services covered by Contractor's final invoice; (ii) any claim which SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

**8.1.6** SFMTA's payment obligation under this Section shall survive termination of this Agreement.



**8.2 Termination for Default; Remedies.**

**8.2.1** Each of the following shall constitute an immediate event of default (“Event of Default”) under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

|           |   |
|-----------|---|
| 3.7       | Submitting False Claims.  |
| 4.13      | Assignment  |
| Article 5 | Insurance and Indemnity   |
| Article 7 | Payment of Taxes  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 10.10     | Alcohol and Drug-Free Workplace                                   |
| 11.10     | Compliance with Laws  |

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor’s property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor’s property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**8.2.2** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the

maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

**8.2.3** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

**8.2.4** Any notice of default must be sent by registered mail to the address set forth in Article 11.

**8.3 Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

**8.4.1** This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

|           |   |
|-----------|---|
| 3.4.1     | Payment Limited to Satisfactory Services                          |
| 3.6       | Audit and Inspection of Records                                   |
| 3.7       | Submitting False Claims   |
| Article 5 | Insurance and Indemnity   |
| 6.1       | Liability of City   |
| 6.3       | Liability for Incidental and Consequential Damages                |
| Article 7 | Payment of Taxes  |
| 8.1.6     | Payment Obligation  |
| 9.1       | Ownership of Results  |
| 9.2       | Works for Hire  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 11.6      | Dispute Resolution Procedure                                      |
| 11.7      | Agreement Made in California; Venue                               |
| 11.8      | Construction  |
| 11.9      | Entire Agreement  |
| 11.10     | Compliance with Laws  |
| 11.11     | Severability  |

**8.4.2** Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

## **Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [www.sfgov.org](http://www.sfgov.org) under "Government."

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter;

Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

**10.4 Nondisclosure of Private, Proprietary or Confidential Information.**

**10.4.1** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

**10.4.2** In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

**10.5 Nondiscrimination Requirements**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Local Business Enterprise and Non-Discrimination in Contracting**

**Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 30% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor’s LBE subcontracting commitments.

**10.7 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

**10.9 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to: (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves; (2) a candidate for the office held by such individual; or (3) a committee controlled by such individual, at any time from the

commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**10.12 Reserved. (Slavery Era Disclosure)**

**10.13 Reserved. (Working with Minors)**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions**

**10.14.1** Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

**10.14.2** The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Reserved. (Public Access to Nonprofit Records and Meetings)**

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)**

**10.18 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**10.19 Reserved. (Preservative Treated Wood Products)**

**Article 11 General Provisions**

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City:

**Deanna Desedas**  
**Marketing and Communications Division**  
**San Francisco Municipal Transportation Agency**  
**One South Van Ness Avenue, 3<sup>rd</sup> Floor**  
**San Francisco, CA 94103**  
[Deanna.desedas@sfmta.com](mailto:Deanna.desedas@sfmta.com)

**OR**

**Amber Vasché**  
**Sustainable Streets Division**  
**San Francisco Municipal Transportation Agency**  
**One South Van Ness Avenue, 7<sup>th</sup> Floor**  
**San Francisco, CA 94103**  
[Amber.vasche@sfmta.com](mailto:Amber.vasche@sfmta.com)

To Contractor: **Lewis Michaelson, President**  
**Katz & Associates, Inc.**  
**5440 Morehouse Drive, Suite 1000**  
**San Diego, CA 92121**

[LMichaelson@katzandassociates.com](mailto:LMichaelson@katzandassociates.com)

**Lisbet Sunshine, President**  
**Barbary Coast Consulting**  
**25 Taylor Street**  
**San Francisco, CA 94102**

[sunshine@barcoast.com](mailto:sunshine@barcoast.com)

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

**11.2 Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

**11.3 Reserved. (Payment Card Industry (PCI) Requirements)**

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement, or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall



operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.9 Entire Agreement.** This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated September 14, 2016. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

## **Article 12 MacBride Principles And Signature**

**12.1 MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this

Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

### **Article 13 Large Vehicle Driver Safety Training Requirements**

**13.1** Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

**13.2** By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

| <b>CITY</b>   | <b>CONTRACTOR</b>  |
|---|--|
| <p><b>San Francisco<br/>Municipal Transportation Agency</b></p> <hr/> <p>Edward D. Reiskin<br/>Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____<br/>Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera<br/>City Attorney</p> <p>By: _____<br/>Isidro A. Jiménez<br/>Deputy City Attorney</p> | <p>Katz &amp; Associates, Inc. and Barbary Coast Consulting, a joint venture</p> <hr/> <p>Lewis Michaelson<br/>President<br/>Katz &amp; Associates, Inc.<br/>5440 Morehouse Drive, Suite 1000<br/>San Diego, CA 92121</p> <p>City vendor number: 52651</p> <hr/> <p>Lisbet Sunshine<br/>President<br/>Barbary Coast Consulting<br/>25 Taylor Street<br/>San Francisco, CA 94102</p> <p>City vendor number: 82639</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> |

**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- C: Contractor Checklist for Document Submittals

## **Appendix A Scope of Services**

### **I. Policy Context**

Contractor shall use the SFMTA's Public Outreach and Engagement Team Strategy (POETS) as guidance in preparing strategies, engagements, and Deliverables that are consistent with the SFMTA's standards below. All Task Orders are in place to help ensure the Project Managers meet the needs of community stakeholders while supporting the SFMTA's key policies, including but not limited to:

- a. SFMTA FY 2013-18 Strategic Plan:  
<https://www.sfmta.com/sites/default/files/pdfs/FY%202013%20-%20FY%202018%20SFMTA%20Strategic%20Plan.pdf>
- b. Transit First Policy (SF Charter, Article VIIA, SEC. 8A.115):  
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- c. POETS
- d. SFMTA Brand Standards
- e. Complete Streets Policy (SF Public Works Code, Article II, SEC. 2.4.13):  
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- f. Vision Zero Goal: <http://visionzerosf.org/>
- g. Better Streets Plan: <http://www.sfbetterstreets.org/>
- h. Bicycle Strategy:  
[https://www.sfmta.com/sites/default/files/BicycleStrategyFinal\\_0.pdf](https://www.sfmta.com/sites/default/files/BicycleStrategyFinal_0.pdf)
- i. Pedestrian Strategy: <http://archives.sfmta.com/cms/rpedmast/documents/1-29-13PedestrianStrategy.pdf>
- j. Walk First Program: <http://walkfirst.sfplanning.org/>

### **II. Scope of Services**

#### **A. General Description of Services**

Contractor will generally support SFMTA project teams with planning, crafting, and delivering best practices, and culturally competent outreach and engagement with stakeholder communities and the public at-large. Depending on the needs of the SFMTA and project team, a Task Order may include a request for comprehensive services for a project – from strategy/planning to execution and evaluation – or be limited to specific services or phases of the project.

## B. Specific Tasks

Specific Services may include, but are not limited to, the following tasks:

- 1) Planning for Public Outreach and Engagement
  - a) Create effective public participation plans that account for project requirements, funding needs, and other related SFMTA projects. Contractor shall work with Project Managers to develop all necessary planning as outlined by POETS for the assigned project. Plans must be consistent with the POETS and utilize industry best practices in public participation, such as those developed by the International Association for Public Participation (IAP2).
  - b) Develop communications assessments that consider, but are not limited to, the following elements:
    - i) Project objectives, goals, and requirements
    - ii) Key stakeholders and project impacts by stakeholder
    - iii) Communications and outreach priorities
    - iv) Effectiveness metrics and methods of evaluation
    - v) Timelines for outreach in coordination with project planning, environmental clearance, design, construction, and evaluation stages, as well as public hearings, SFMTA Board meetings, scoping hearings, or other required Federal, State, or local approvals.
  - c) Develop outreach and communication plans that support project goals and objectives for public participation plans.
    - i) Create a comprehensive communications and outreach strategy that engages diverse stakeholders (including people left out of primary stakeholder groups, such as merchant and neighborhood associations), other affected parties and the public-at-large.
    - ii) Outline communications and outreach tactics through key project phases.
    - iii) Identify opportunities for early outreach and engagement.
    - iv) Develop a toolkit of customized approaches to engage stakeholders on the project.
    - v) Compile a customized stakeholder contact list.
    - vi) Outline key messages.
    - vii) Identify coaching and training needs for Project Manager and staff, including media training, active listening, facilitation, and mediation, negotiations, and handling difficult people and situations.

## 2) Implementation of Public Outreach and Engagement

- a) Assist with the implementation of outreach meetings
  - i) Schedule and reserve venues and provide logistical support for outreach meetings, inter- and intra-agency meetings, briefings, outreach at standing community events, tours, and site visits, including transportation access, presentation set-up, sign-in, materials production, and other duties as assigned.
  - ii) Ensure broad awareness among relevant audiences of scheduling and content for stakeholder and outreach meetings.
  - iii) Develop presentations (e.g., PowerPoint) and presentation boards for meetings.
  - iv) Provide meeting facilitation.
  - v) Record meeting minutes, transcribe audio visual recordings, and draft meeting debriefs.
  - vi) Track meeting attendance.
  
- b) Collect and manage stakeholder engagement and feedback
  - i) Conduct and facilitate formal and informal focus groups.
  - ii) Design and administer surveys using different formats, including online, phone, intercept, and in-person interviews.
  - iii) Hold design charrettes.
  - iv) Solicit on-site, in-person feedback.
  - v) Conduct balloting or other voting mechanisms.
  - vi) Set up and monitor hotlines, including working with 311 staff to triage project-related calls; create new hotlines, as appropriate.
  - vii) Aggregate feedback to allow for detailed reporting and trend analysis.
  - viii) Prepare detailed outreach history summaries in preparation for legislative action or completion of project community phase, including:
    - (1) Reports documenting all public engagement activities
    - (2) Photographs from engagement events
    - (3) Compilation of main engagement themes (as described above)
    - (4) Counts and analysis of the number of individuals and stakeholder groups participating
  - ix) Identify and procure specific collection and measurement tools, as needed.
  
- c) Maintain stakeholder contacts and correspondence
  - i) Monitor, track and provide follow-up responses to constituent correspondence.
  - ii) Manage stakeholder concerns about scheduling meetings, logistics, and notification protocol.
  - iii) Update and maintain project stakeholder contact database, including constituents who are on- and offline.

- iv) Develop expanded stakeholder mailing lists for mailings and email blasts to reach a broad public audience.
- 3) Design and Development of Communications Materials
- a) Collateral Materials
    - i) Following the SFMTA’s brand standards, write and design culturally relevant project collateral materials, such as fact sheets, mailers, reports, and presentation decks, and templates using maps, infographics, diagrams, renderings, illustrations, and photographs.
    - ii) Translate materials for non-English language speakers on request.
    - iii) Ensure collateral formats are compliant with ADA accessibility standards.
  - b) Digital Assets
    - i) Assist in development and implementation of digital communications to support web pages, emails, blogs, and social media.
    - ii) Draft project information for websites and for social media.
    - iii) Ensure digital assets are compliant with ADA accessibility standards.
    - iv) Provide social media monitoring services.
  - c) Video Production
    - i) Write, produce and edit videos that increase public understanding of project.
    - ii) Develop public dissemination plan for videos.
    - iii) Translate videos for non-English language speakers on request.
  - d) Miscellaneous Items
    - i) Develop customized give-away materials (i.e., “swag”) that support public interest and engagement.
    - ii) Procure miscellaneous materials and supplies for meetings and presentations.

**Appendix B  
Calculation of Charges**

Per Section 3.3.2, in addition to the rates shown below, Contractor may charge City a 5% markup on Subcontractor labor. Contractor shall itemize the markup in every invoice.

| Position                     | Unburdened<br>Hourly Rate  | Audited<br>Overhead<br>Rate | Fixed<br>Contractor<br>Fee (Cap) | Not-to-Exceed<br>Fully Burdened<br>Hourly Rate |
|------------------------------|--|-----------------------------|----------------------------------|--|
| <b>KATZ &amp; ASSOCIATES</b> |  |                             |                                  |  |
| Principal in Charge          | \$71.17  | 181%                        | 10%                              | \$220.00                                       |
| Managing Partner             | \$48.07  | 181%                        | 10%                              | \$148.58                                       |
| Senior Comm.<br>Manager      | \$46.63  | 181%                        | 10%                              | \$144.13                                       |
| Senior Comm.<br>Manager      | \$39.90  | 181%                        | 10%                              | \$123.33                                       |
| Communications<br>Manager    | \$36.05  | 181%                        | 10%                              | \$111.43                                       |
| Community Eng.<br>Spec.      | \$33.65  | 181%                        | 10%                              | \$104.01                                       |
| Community Eng.<br>Spec.      | \$30.28  | 181%                        | 10%                              | \$97.15  |
| Project Assistant            | \$26.44  | 181%                        | 10%                              | \$81.72  |
| Graphic Designer             | \$28.84  | 181%                        | 10%                              | \$89.14  |
| <b>Staff Accountant</b>      | <b>\$23.22</b>   | 181%                        | 10%                              | <b>\$71.79</b>                                 |
| <b>Barbary Coast</b>         |  |                             |                                  |  |
| Principal in Charge          | The Parties have negotiated a flat fully<br>burdened hourly rate |                             |                                  | \$220.00                                       |
| Vice President               |  |                             |                                  | \$185.00                                       |
| Director                     |  |                             |                                  | \$170.00                                       |
| Account Manager              |  |                             |                                  | \$150.00                                       |
| Senior Project<br>Manager    |  |                             |                                  | \$150.00                                       |
| Senior Project<br>Manager    |  |                             |                                  | \$150.00                                       |
| Project Manager              |  |                             |                                  | \$125.00                                       |
| Project Assistant            |  |                             |                                  | \$60.00  |



| Position   | Unburdened Hourly Rate   | Audited Overhead Rate | Fixed Contractor Fee (Cap) | Not-to-Exceed Fully Burdened Hourly Rate |
|--|--|-----------------------|----------------------------|--|
| <b>51 West Media</b>   |  |                       |                            |  |
| Executive Producer   | The Parties have negotiated a flat fully burdened hourly rate. |                       |                            | \$175.50                                 |
| Senior Producer  |  |                       |                            | \$150.43                                 |
| Senior Producer  |  |                       |                            | \$150.43                                 |
| Producer   |  |                       |                            | \$100.28                                 |
| Producer   |  |                       |                            | \$100.28                                 |
| Production Assistant   |  |                       |                            | \$60.18                                  |
| Editor   |  |                       |                            | \$81.48                                  |
| <b>Caribou Public Relations, Inc.</b>  |  |                       |                            |  |
| Outreach Manager   | \$93.57  | 70%                   | 10%                        | \$174.98                                 |
| Outreach Manager   | \$93.57  | 70%                   | 10%                        | \$174.98                                 |
| Street Team Members  | \$26.69  | 70%                   | 10%                        | \$49.91                                  |
| <b>JBR Partners Inc.</b>   |  |                       |                            |  |
| Programs Director  | \$84.75  | 136%                  | 10%                        | 220.00*                                  |
| Operations Director  | \$49.00  | 136%                  | 10%                        | \$127.20                                 |
| Field Supervisor   | \$34.62  | 136%                  | 10%                        | \$89.87                                  |
| Ambassadors  | \$19.26  | 136%                  | 10%                        | \$50.00                                  |
| <b>lowercase production</b>  |  |                       |                            |  |
| Principal  | \$75.00  | 79%                   | 10%                        | \$147.68                                 |
| Project Manager  | \$60.00  | 79%                   | 10%                        | \$118.14                                 |
| Designer   | \$55.00  | 79%                   | 10%                        | \$108.30                                 |
| Designer   | \$55.00  | 79%                   | 10%                        | \$108.30                                 |
| Programmer   | \$35.00  | 79%                   | 10%                        | \$68.92                                  |
| <b>Fairbank, Maslin, Maullin, Metz &amp; Associates, Inc. (FM3 Research)</b> |  |                       |                            |  |
| COO  | The Parties have negotiated a flat fully burdened hourly rate. |                       |                            | \$200.00                                 |
| Associate  |  |                       |                            | \$160.00                                 |
| Research Manager   |  |                       |                            | \$170.00                                 |
| Director   |  |                       |                            | \$180.00                                 |
| Director   |  |                       |                            | \$180.00                                 |
| Partner/Principal  |  |                       |                            | \$220.00                                 |
| <b>Greenway Consulting</b>   |  |                       |                            |  |
| Facilitator  | The Parties have negotiated a flat fully burdened hourly rate. |                       |                            | \$125.00                                 |

| <b>Position</b>                       | <b>Unburdened Hourly Rate</b>                                  | <b>Audited Overhead Rate</b> | <b>Fixed Contractor Fee (Cap)</b> | <b>Not-to-Exceed Fully Burdened Hourly Rate</b> |
|---------------------------------------|--|------------------------------|-----------------------------------|---|
| <b>RDJ Enterprises LLC</b>            |  |                              |                                   |   |
| Outreach Specialist                   | \$38.46  | 134%                         | 10%                               | \$99.00   |
| Outreach Coordinator                  | \$41.83  | 134%                         | 10%                               | \$107.67  |
| Outreach Manager                      | \$84.14  | 134%                         | 10%                               | \$216.58  |
| <b>The Participation Company LLC</b>  |  |                              |                                   |   |
| Senior Strategist/Technical Analyst   | The Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$220.00  |
| Senior Facilitator/Dispute Resolution |  |                              |                                   | \$200.00  |
| Communication Specialist              |  |                              |                                   | \$125.00  |
| <b>InterEthnica Inc.</b>              |  |                              |                                   |   |
| Principal/Cultural Contractor         | The Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$150.00  |
| Account Manager                       |  |                              |                                   | \$125.00  |
| Project Manager                       |  |                              |                                   | \$125.00  |
| Graphic Designer                      |  |                              |                                   | \$125.00  |
| Illustrator                           |  |                              |                                   | \$101.75  |
| Typesetter                            |  |                              |                                   | \$101.00  |
| Outreach Staff                        |  |                              |                                   | \$75.01   |
| Outreach Lead                         |  |                              |                                   | \$95.00   |
| Editor                                |  |                              |                                   | \$101.75  |
| Senior Interpreter                    |  |                              |                                   | \$184.99  |
| Interpreter                           |  |                              |                                   | \$172.98  |
| Researcher                            |  |                              |                                   | \$150.00  |
| Assistant Researcher                  |  |                              |                                   | \$95.00   |
| Intern                                |  |                              |                                   | \$50.88   |
| Meeting Assistants                    |  |                              |                                   | \$50.88   |
| Photographer                          |  |                              |                                   | \$183.15  |
| Sound Technician                      |  |                              |                                   | \$152.62  |
| Voice over Talent                     | \$125.00   |                              |                                   |   |
| Administration                        | \$76.29  |                              |                                   |   |

### **InterEthnica Inc. Interpretation Cancellation Clause**

In the event an assignment is cancelled less than 24 hours prior to a meeting or event, the client agrees to pay the full cost of the interpretation.

### **InterEthnica Inc. Audio Translation Equipment**

Headset \$18 per head set

Translation transmitter \$125 per day

Delivery, set-up and equipment test \$125 per event.

On site audio technician available will be billed at \$125 per hour.

Translation minimum charge of \$125 per language.

This applies to documents that contain a word count of 200 or less.

\*The exception to this rule is advertising and slogan translation, which is charged at an hourly rate of \$125.

Translation rates are \$0.27 to \$0.40 per word depending on the language and the complexity of the source text.

Spanish - \$0.27 per word

Hmong - \$0.32 per word

Arabic - \$0.30 per word

Russian - \$0.32 per word

Chinese - Mandarin and Cantonese - \$0.30 per word

Vietnamese - \$0.32 per word

Tagalog - \$0.35 per word (Tagalog/ Filipino recently was raised due to the high demand)

Japanese - \$0.32 per word

Korean - \$0.32 per word

Punjabi - \$0.32 per word

These rates include translation, proofreading, and one round of client requested revisions. Our translators are all native speakers of the target language and live locally.

**Appendix C**  
**Contractor Checklist for Document Submittals**

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)**

Task Order Number: \_\_\_\_\_

Task Order Title: \_\_\_\_\_

This checklist must be filled in by the contractor and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

1. Document is edited for grammatical and typographical errors, clarity, and format.
2. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
3. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
4. All document sections, tables, figures, appendices, etc. are submitted.
5. Footnotes are on same page as the reference (no endnotes).
6. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
7. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
8. Data in tables and figures are cross-checked with text.
9. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
10. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
11. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
12. All document background reports are finalized and included with the submittal packet.
13. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Contractor at the Task Order level:
  - a. Date / Times;

- b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
- c. Name and contact information of contractor performing the count effort;
- d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
  - i. For Machine Counts: Street Name\_Direction of Approach\_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)
  - ii. For Turning Movement Counts by Hand: Street Name\_Cross Street\_Time of Day (i.e., LAGUNA CLAY PM);
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
- f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
- g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

**Notes:**

Firm Name: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Katz and Associates/Barbary Coast (Joint Venture)**

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**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Katz and Associates/Barbary Coast (Joint Venture)  
Contract No. SFMTA2016-39/1 (FHWA)**

This Agreement is made this 18th day of April, 2017, in the City and County of San Francisco, State of California, by and between Katz and Associates, 5440 Morehouse Drive, Suite 1000, San Diego, CA 92121, and Barbary Coast Consulting, 995 Market Street, 2<sup>nd</sup> Floor, San Francisco, CA 94103, a joint venture, (Contractor) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

- A.** The SFMTA wishes to contract with a qualified public relations firm for public outreach and engagement services to be provided on an as-needed basis.
- B.** The SFMTA issued a Request for Proposals (RFP) on July 29, 2016 and selected Contractor as the highest qualified scorer pursuant to the RFP.
- C.** The Disadvantage Business Enterprise (DBE) subcontracting participation requirement for this Agreement is 35 percent.
- D.** There is no Local Business Entity (LBE) subcontracting participation requirement for this Agreement.
- E.** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- F.** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 41409-15/16 on 01/04/2016.

Now, THEREFORE, the Parties agree as follows:

**Article 1      Definitions**

The following definitions apply to this Agreement:

**1.1 Agreement:** This contract document and all referenced appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference.

**1.2 Award:** Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute this Agreement.

- 1.3 CCO:** The Contract Compliance Office of the SFMTA.
- 1.4 City:** The City and County of San Francisco, a municipal corporation, acting by and through the SFMTA.
- 1.5 CMD:** The Contract Monitoring Division of the City.
- 1.6 Contractor:** Katz and Associates/Barbary Coast (Joint Venture)
- 1.7 Days:** Unless otherwise designated, the word “Days” refers to working days of the City, which are generally Monday through Friday, excluding holidays. The use of the term “days,” “working days” or “business days” in this Agreement shall be synonymous.
- 1.8 Deliverables:** Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.
- 1.9 Director:** The Director of Transportation of the SFMTA or his/her designee.
- 1.10 Disadvantaged Business Enterprise or DBE:** A for-profit, small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.
- 1.11 Effective Date:** The date on which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.
- 1.12 Federal Highway Administration (FHWA):** An operating administration of the U.S. Department of Transportation (DOT).
- 1.13 Key Personnel:** The personnel named in Section 4.6.
- 1.14 Mandatory City Requirements:** Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.
- 1.15 Notice To Proceed (NTP):** A letter or email from the Project Manager notifying Contractor of the day when work is to commence under each Task Order.
- 1.16 Party(ies):** The City and Contractor, either collectively or individually.
- 1.17 Project Manager:** The designated SFMTA employee who will assume all duties and responsibilities to manage each Task Order.
- 1.18 Proposal:** The Contractor's written response to the RFP or a written request for a proposal for the performance of a Task Order, as the context requires.
- 1.19 Purchase Order:** A written order issued by the SFMTA to the Contractor, authorizing the start of work under each Task Order.

**1.20 Request for Proposals (RFP):** The Request for Proposals for As-Needed Public Outreach and Engagement Services issued by the SFMTA on July 29, 2016.

**1.21 San Francisco Municipal Railway (Muni):** The public transit system of San Francisco, under the jurisdiction of the SFMTA.

**1.22 San Francisco Municipal Transportation Agency (SFMTA):** The agency of the City with jurisdiction over surface transportation in San Francisco, as provided in the San Francisco Charter Article VIII A.

**1.23 Services:** The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, and further delineated by the Task Order, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

**1.24 Subcontractor:** Any firm under contract to Contractor for services under this Agreement.

**1.25 Task Order:** A written directive from the SFMTA to Contractor to perform specified Services under this Agreement.

## **Article 2 Term of the Agreement**

**2.1** The term of this Agreement shall commence on the latter of: (i) April 18, 2017 or (ii) the Effective Date and shall expire on April 18, 2019, unless earlier terminated as otherwise provided herein.

**2.2** The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **Article 3 Financial Matters**

**3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

**3.3 Compensation.**

**3.3.1 Payment Amount.** Contractor's compensation for the Services shall be based on either: (1) a negotiated lump-sum price per task or Deliverable (which includes all direct and indirect costs, wages and benefits, overhead, profit, and all other costs) for each Task Order; or (2) a negotiated number of hours per task or Deliverable using the hourly rates set forth in Appendix B (Calculation of Charges) plus a fixed contractor fee, and subject to a total amount not to exceed. In no event shall the total amount of this Agreement for all Task Orders exceed five hundred thousand dollars (\$500,000).

**3.3.2 Method of Computing Hourly Compensation.** For Services paid for on an hourly basis, the SFMTA shall pay Contractor the applicable hourly rates plus fixed contractor fees, the sum of which equals the fully burdened hourly rates. The hourly rate shall be the sum of the applicable unburdened hourly rate and overhead rate shown in Appendix B. The fixed contractor fee shall cover profit, non-compensable overhead, and other operating costs; the Parties shall negotiate the fixed contractor fee on a Task Order basis, subject to the cap for each fixed contractor fee set forth in Appendix B. In cases where Contractor or a Subcontractor are DBEs or sole proprietors without audited hourly rates, the Parties have negotiated the flat fully burdened hourly rates, inclusive of profit, non-compensable overhead, and other operating costs, set forth in Appendix B. Contractor's mark-up for managing Subcontractors shall be no more than 5% of the fully burdened hourly rate.

**(a) Unburdened Hourly Rates.** The unburdened hourly rates (i.e., gross wages or salaries paid to personnel that perform the Services) shown in Appendix B shall be fixed until 24 months after the Effective Date, and may be adjusted thereafter only if the City exercises its option to extend the term of the Agreement. Any adjustment to the hourly rates in Appendix B shall be negotiated by the Parties, except that no adjustment shall exceed the corresponding annual increase in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for All Urban Consumers. No hourly rate shall be adjusted without prior written approval of the SFMTA.

**(b) Overhead Rates .** The overhead rates shown for Contractor and each Subcontractor in Appendix B are estimates of actual overhead rates and may be adjusted after 24 months with prior written approval from the Director of Transportation. Contractor's and Subcontractors' combined unburdened hourly rates and overhead rates are subject to audit in compliance with Federal requirements.

The overhead rates attached as Appendix B, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within 180 days of the end of Contractor's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Contractor shall submit to the Project Manager Contractor's and all Subcontractors' actual rates during the term of this Agreement. For each rate paid to the Contractor that exceeds the Contractor's or any Subcontractor's actual rate, the Contractor shall reimburse to the City the total difference between the rate paid and Contractor's or Subcontractor's actual rate during the term of this Agreement. Contractor shall reimburse City within 30 days of written notice from City seeking reimbursement. For each actual overhead rate of Contractor or Subcontractor that exceeds the rate paid to Contractor, City shall pay to Contractor the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Contractor within 60 days of City's receipt of all of Contractor's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Contractor's rates as provided above.

**(c) Reimbursable Costs.** This Agreement is subject to federal regulations concerning the reimbursement and audit of expenses, costs and overhead as set in the regulation "Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards," at in 2 CFR Part 200 et seq. ("Federal Cost Requirements") The Contractor acknowledges that it is familiar with the Federal Cost Requirements. Contractor shall not seek reimbursement and the City shall not pay reimbursement to Contractor for costs (including but not limited to direct costs, indirect costs, and overhead) that are not compensable under the Federal Cost Requirements. Contractor understands and acknowledges that the City shall not reimburse Contractor for Contractor's costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments to Contractor under this Agreement are subject to audit and adjustment in accordance with the requirements and standards set out in the Federal Cost Requirements.

**(d) Out-of-Pocket Expenses.** The SFMTA shall reimburse Contractor for Contractor's and Subcontractors' actual costs of approved out-of-pocket expenses. Compensation for materials and other approved out-of-pocket expenses, other than travel, shall be at direct cost, plus a mark-up not to exceed 5%. Compensation for travel-related expenses shall be at direct cost without mark-up. The mark-up for media buys shall not exceed 7%. The mark-up for media buys shall be applied by either the Contractor or Subcontractor, whichever is making the purchase, and shall not be combined with the 5% mark-up for other approved out-of-

pocket expenses. All out-of-pocket expenses must be pre-approved in writing by the Project Manager. For travel expenses, airfare must be coach class only and reasonable; reservations must be made in a timely fashion to receive the lowest rate possible. Vehicle expenses for travel will only be reimbursed if the travel is outside of a 100-mile radius of the City. Payment for travel related costs shall not exceed U.S. General Services Administration (GSA) per diem and mileage rates. Legible receipts for all expenses, including travel, must accompany the invoice, or City reserves the right to refuse reimbursement of expenses until receipts are provided.

(e) **Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile, and telecommunication expenses shall not be tracked or reimbursed separately as out-of-pocket costs. Contractor and Subcontractor personnel relocation costs and entertainment or personal expenses shall not be reimbursable under this Agreement. Office and field supplies/equipment expenses shall not be reimbursed unless Contractor demonstrates these supplies and equipment are out of the ordinary, necessary, and used exclusively to provide the Services. If the SFMTA determines that office and field supplies/equipment expenses out of the ordinary, necessary, and used exclusively to provide the Services, such expenses must be pre-approved in writing by the Project Manager. Vehicle expenses for travel within a 100-mile radius of the City will not be reimbursable.

(f) **Use of Public Transportation.** The City has a transit-first policy, and the SFMTA encourages Contractor and Subcontractors to use public transit in performance of the Services to the maximum extent possible. The SFMTA will closely review Contractor's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Taxicabs and hired cars are not considered public transit. The SFMTA reserves the right to refuse to reimburse travel expenses that are not in accordance with these policies.

**3.4 Payment.** Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Each Task Order shall include a schedule for payment of each task or Deliverable as agreed to by the Project Manager and Contractor. The schedule for payment shall clearly state when payment shall be made as either a one-time lump sum upon completion, or as a percentage or dollar amount per unit each month as defined in the Task Order. Under special circumstances, and upon pre-approval by the Project Manager, compensation may be made on a time and materials basis. Such compensation shall be clearly documented in the Task Order as the schedule of payment. Project Manager shall be responsible for monitoring the Services performed by Contractor and appropriateness of the monthly invoice amount(s). Compensation shall be made for Services identified in the invoice that the Project Manager, or SFMTA's designee, in his or her sole discretion, concludes have been satisfactorily performed. The SFMTA will pay Contractor within 30 calendar days of receipt of the invoice, unless the SFMTA notifies Contractor that a dispute as to the invoice exists. In no event shall City be liable for interest or late charges for any late payments.



**3.4.1 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

**3.4.2 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of the City's withholding of payments as provided herein.

**3.4.3 Invoice Format.** Invoices furnished by Contractor under this Agreement shall be in a form acceptable to the Controller and City, and shall include a unique invoice number. Contractor shall submit invoices for all allowable charges incurred in the performance of each Task Order. Contractor shall submit no more than one invoice in a month for each Task Order, and each invoice shall contain the following information:

- a. Contract number;
- b. Task Order number;
- c. Description of the work performed or Services rendered;
- d. Name, position, fully burdened hourly billing rate as set forth in Appendix B, dates and hours worked of employee(s) whose labor is invoiced;
- e. Other direct costs/out-of-pocket expenses itemized and with receipts showing the corresponding order of itemization;
- f. Subcontractor costs supported by invoice itemization in the same format as described above;
- g. Total costs;
- h. Completed SFMTA Task Order Invoice Cover Sheet; and
- i. Payroll records substantiating all labor charges for Contractor and all Subcontractors shown on the invoice.

**3.4.4 DBE Payment .** Contractor must submit all required payment forms to enable CCO to monitor Contractor's compliance with the DBE subcontracting commitments under this Agreement. Contractor shall pay its DBE Subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the SBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required payment forms. Failure to submit all required payment forms with each payment request may result in the Controller withholding 20 percent of the payment due

pursuant to that invoice until the required payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a required forms to verify its payments to DBE Subcontractors

### **3.4.5 Getting Paid for Goods and/or Services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) the enroller must be their company's authorized financial representative; (ii) the company's legal name, main telephone number, and all physical and remittance addresses used by the company; (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor); and (iv) the company's bank account information, including routing and account numbers.

### **3.5 Grant-Funded Contracts.**

**3.5.1 Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

**3.5.2 FHWA Requirements.** The provisions contained in "U.S. DOT Contract Requirements," attached to this Agreement as Appendix D, are incorporated into this Agreement. If there is any conflict between the FHWA terms and conditions and any other terms and conditions of this Agreement, the FHWA terms and conditions shall take precedence.

**3.6 Audit and Inspection of Records.** Contractor shall maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Services. Contractor shall permit the City to audit, examine, and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records, or personnel, and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this subsection. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.7 False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A, “Scope of Services.” Officers and employees of the City are not authorized to request, and the City is not required to reimburse Contractor for, services performed beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, “Modification of this Agreement.” Contractor shall provide high quality Deliverables that shall require minimal revisions by SFMTA. Contractor shall adhere to the quality assurance guidelines set forth in Appendix C, “SFMTA Contractor Checklist for Document Submittals,” and respond fully and promptly to requests for revisions to initial Submittals from the City in order to finalize documents.

**4.2 Priority of Documents.** All requirements of the RFP and the representations made in the Proposal that are not in conflict with provisions of this Agreement are incorporated by reference and made an integral part of this Agreement as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or the Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP or Proposal shall control. In case of conflict between the RFP and the Contractor’s Proposal, the RFP shall govern. Documents listed as Appendices to this Agreement are incorporated by reference as though fully set forth herein.

**4.3 Information and Data.** Contractor shall request in writing any information and data it requires to prepare Proposals for or perform the Services described in each Task Order. Contractor shall identify the timing and priority in which this information and data will be required. The Parties shall reach agreement as to the availability and delivery time for this data and information during the Proposal phase for each Task Order.

**4.4 Presentations.** If requested by City, Contractor shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.

**4.5 Task Order Requirements.** The SFMTA will define the requirements of each Task Order. The Parties will agree on the scope of services, cost, and estimated time to perform each Task Order before Contractor starts work on the Task Order.

**4.5.1 Scope of Services.** The SFMTA will prepare the scope of Services and expected time of completion for each Task Order, and send the scope of Services to Contractor with a written request for a proposal for the performance of the Task Order.

**4.5.2 Contractor Proposal.** Contractor shall prepare and submit a proposal for each Task Order showing:

(a) A work plan that includes a detailed description by task of the Services to be performed and the means and methods that will be used to perform them;

(b) A schedule by task and Deliverable, including key milestones and/or critical path Deliverables;

(c) A list of Contractor's personnel and Subcontractors (in accordance with Appendix B) assigned to each part of the Services, along with: (1) a resume indicating why such personnel or Subcontractors are qualified to perform the Services; and (2) a narrative describing the prior experience of personnel and Subcontractors in performing work similar to the Services;

(d) A detailed cost estimate for each task or Deliverable showing:  
(i) Estimated hours and hourly rates by position as listed in Appendix B for both Contractor and Subcontractor personnel. Labor hours for preparing monthly invoices or filling out required DBE forms will not be allowed; additional Subcontractor program management labor hours by Contractor will not be allowed. Overtime labor hours will not be allowed without prior written approval from the Project Manager. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

(ii) Estimated reasonable out-of-pocket expenses. Contractor may charge a fixed percentage mark-up for out-of-pocket expenses as set forth in section 3.3.2(d) of this Agreement. All expenses must be pre-approved in writing by the Project Manager.

**4.5.3 Negotiation of Cost.** The Project Manager will review the Proposal and negotiate for each Task Order either a lump-sum price per task or Deliverable, or number of hours per task or Deliverable, as described in Section 3.3.1.

**4.5.4 Record of Negotiations.** The Project Manager will document the negotiations and any agreement in a record of negotiations.

**4.5.5 Subcontracting Goals.** Upon completion of negotiations for each Task Order, Contractor shall provide Project Manager a memo describing the proposed DBE goal associated with the Task Order. The memo shall include a table that lists: (1) all firms performing Services on the Task Order; (2) whether the firm is a DBE; (3) the dollar value and

percentage of work attributed with each firm; and (4) the overall calculated DBE goal for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's DBE goal memo, approve or deny the goal, and issue a memo to file by CMD. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in this Agreement. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall DBE goal set forth in the Agreement.

**4.5.6 Controller Certification.** The City will request certification from the Controller that adequate funds are available to proceed with the Task Order as agreed.

**4.5.7 Notice to Proceed.** After the certification of each Task Order, a Purchase Order will be issued by the City, and the Project Manager will send to the Contractor a written NTP and Task Order number. Contractor shall use the Task Order number and Purchase Order when submitting invoices to the City for payment. Contractor shall not commence work under any Task Order until it receives a corresponding Purchase Order and written NTP from the Project Manager.

**4.5.8 Changes.** Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of Services of the Task Order(s). If there is a material change in the scope of Services of a task, then a proposal, negotiations, and record of negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a Task Order.

**4.5.9 Failure to Agree on Terms of Task Order.** If the Parties do not reach agreement on the terms of any Task Order, the SFMTA may either cancel the Task Order and have the Services performed by other available sources, or direct Contractor to proceed with the Task Order under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances shall Contractor refuse to undertake a City-ordered task.

**4.6 Personnel and Key Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's SFMTA-approved Subcontractors) to perform the Services. Contractor shall comply with City's reasonable requests regarding assignment and removal of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the time set forth in the corresponding Task Order. Contractor agrees that the following personnel ("Key Personnel") shall be committed and assigned to provide services under this Agreement to the level required by SFMTA for the term of the Agreement and, excluding Lewis Michaelson, shall also be staffed at Contractor's local offices within the San Francisco Bay Area for all such time:

Amber Shipley, Barbary Coast  
Peter Lauterborn, Barbary Coast  
Gregory Parks, Katz & Associates  
Lewis Michaelson, Katz & Associates  
Nicolas Townes, Katz & Associates

Contractor shall advise SFMTA immediately any time one of the Key Team Members deviates from its committed role or time on the Task Order (e.g., is assigned to another project). SFMTA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

**4.7 Current Workload and Available Resources.** Contractor covenants that its current workload and the workload of its Subcontractors will not affect the commencement and the progress of the Services performed under this Agreement. Contractor shall have all the necessary professional, technical, and support personnel, including those of the Subcontractors', available, ready and mobilized to perform the Services within two weeks of the receipt of NTP on a particular Task Order. In addition, Contractor shall make good faith efforts to execute all applicable Subcontracts within three weeks of NTP. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

**4.8 Transmittal of Deliverables.** When requested by the Project Manager, and after completion of each Task Order or Deliverable, Contractor shall transmit to the SFMTA all work product (duplicates and originals) produced or accumulated in the course of its and its Subcontractors' work on this Agreement. Contractor's project manager and other Key Personnel shall have thoroughly reviewed and approved all work product and signed off as such prior to transmitting them to the SFMTA.

**4.9 Reserved (Reproduction of Work Product).**

**4.10 SFMTA's Responsibilities Regarding Deliverables.** The SFMTA shall review and comment on Deliverables within 14 calendar days of receipt by SFMTA. The SFMTA and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the approved Task Order. The SFMTA's review and comments of Contractor submittals shall in no way relieve the Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the SFMTA relieve the Contractor of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

If Contractor considers certain SFMTA review comments or directives, either written or oral, to require work efforts not included in the approved Scope of Services for each Task Order, the Contractor shall provide SFMTA with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.8 above.

**4.11 Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the

name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes its approval of the Subcontractors listed below.

- a) 51 West Media
- b) Caribou Public Relations, Inc.
- c) JBR Partners Inc.
- d) lowercase production
- e) Fairbank, Maslin, Maullin, Metz & Associates, Inc. (FM3 Research)
- f) Greenway Consulting
- g) RDJ Enterprises LLC
- h) The Participation Company LLC
- i) InterEthnica Inc.
- j) Seasons Productions
- k) Bang the Table USA LLC

#### **4.12 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

**4.12.1 Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the Services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health, or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees, and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state, or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to

control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.12.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

**4.13 Assignment.** The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

**4.14 Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.



## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(i) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or personal information or other personally identifying information, stored or transmitted in electronic form;

(ii) Network security liability arising from the unauthorized access to, use of, or tampering with, computers or computer systems, including hacker attacks; and

(f) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

**5.1.2** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

**5.1.3** All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties." All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

**5.1.4** Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

**5.1.5** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

**5.1.6** Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

**5.1.7** The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and Subcontractors.

**5.1.8** If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person,

including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, contractors and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **Article 6      Liability of the Parties**

**6.1      Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT AMOUNT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

**6.2      Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor,

or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

**7.1** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

**7.2** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

**7.2.1** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

**7.2.2** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

**7.2.3** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

**7.2.4** Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

**8.1.1** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

**8.1.2** Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by SFMTA.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At SFMTA's direction, assigning to SFMTA any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that SFMTA designates to be completed prior to the date of termination specified by SFMTA.

(f) Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which SFMTA has or may acquire an interest.

**8.1.3** Within 30 days after the specified termination date, Contractor shall submit to SFMTA an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5 percent of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to SFMTA, and any other appropriate credits to SFMTA against the cost of the Services or other work.

**8.1.4** In no event shall SFMTA be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys’ fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

**8.1.5** In arriving at the amount due to Contractor under this Section, SFMTA may deduct: (i) all payments previously made by SFMTA for Services covered by Contractor’s final invoice; (ii) any claim which SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and SFMTA’s estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

**8.1.6** SFMTA’s payment obligation under this Section shall survive termination of this Agreement.

**8.2 Termination for Default; Remedies.**

**8.2.1** Each of the following shall constitute an immediate event of default (“Event of Default”) under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

|           |   |
|-----------|---|
| 3.7       | Submitting False Claims.  |
| 4.13      | Assignment  |
| Article 5 | Insurance and Indemnity   |
| Article 7 | Payment of Taxes  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 10.10     | Alcohol and Drug-Free Workplace                                   |
| 11.10     | Compliance with Laws  |

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by

ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**8.2.2** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

**8.2.3** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

**8.2.4** Any notice of default must be sent by registered mail to the address set forth in Article 11.

**8.3 Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such

default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

**8.4.1** This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

|           |   |
|-----------|---|
| 3.4.1     | Payment Limited to Satisfactory Services                          |
| 3.5.1     | Grant Funded Contracts - Disallowance                             |
| 3.6       | Audit and Inspection of Records                                   |
| 3.7       | Submitting False Claims   |
| Article 5 | Insurance and Indemnity   |
| 6.1       | Liability of City   |
| 6.3       | Liability for Incidental and Consequential Damages                |
| Article 7 | Payment of Taxes  |
| 8.1.6     | Payment Obligation  |
| 9.1       | Ownership of Results  |
| 9.2       | Works for Hire  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 11.6      | Dispute Resolution Procedure                                      |
| 11.7      | Agreement Made in California; Venue                               |
| 11.8      | Construction  |
| 11.9      | Entire Agreement  |
| 11.10     | Compliance with Laws  |
| 11.11     | Severability  |

**8.4.2** Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

**Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards,



photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [www.sfgov.org](http://www.sfgov.org) under "Government."

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

### **10.4 Nondisclosure of Private, Proprietary or Confidential Information.**

**10.4.1** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

**10.4.2** In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall

exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

## **10.5 Nondiscrimination Requirements**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

## **10.6 Disadvantaged Business Enterprise Program.**

**10.6.1 General.** The SFMTA is committed to a Disadvantaged Business Enterprise Program (DBE Program) for the participation of DBEs in contracting opportunities. Accordingly, Contractor must comply with all applicable federal regulations regarding DBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to DBEs performing work under this Agreement. More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

**10.6.2 Compliance with DBE Program.** Contractor shall comply with the DBE provisions contained in Appendix E attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the DBE goal set for the total dollar amount awarded for the Services to be performed under this Agreement. Failure of Contractor to comply with any of these requirements shall be deemed a material breach of this Agreement.

**10.6.3 Non-Discrimination in Hiring.** Pursuant to City and SFMTA policy, Contractor is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure non-discrimination in Contractor's employment practices.

**10.7 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By

signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

**10.9 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using, or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701)

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial

officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**10.12 Reserved. (Slavery Era Disclosure)**

**10.13 Reserved. (Working with Minors)**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions**

**10.14.1** Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor’s obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

**10.14.2** The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Reserved. (Public Access to Nonprofit Records and Meetings)**

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)**

**10.18 Reserved. (Preservative Treated Wood Products)**

## Article 11 General Provisions

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Deanna Desedas  
Marketing and Communications Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
[Deanna.desedas@sfmta.com](mailto:Deanna.desedas@sfmta.com)

OR

Amber Vasché  
Sustainable Streets Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
[Amber.vasche@sfmta.com](mailto:Amber.vasche@sfmta.com)

To Contractor: Lewis Michaelson, President  
Katz & Associates, Inc.  
5440 Morehouse Drive, Suite 1000  
San Diego, CA 92121  
[LMichaelson@katzandassociates.com](mailto:LMichaelson@katzandassociates.com)

Lisbet Sunshine, President  
Barbary Coast Consulting  
25 Taylor Street  
San Francisco, CA 94102  
[sunshine@barcoast.com](mailto:sunshine@barcoast.com)

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

**11.2 Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

**11.3 Reserved. (Payment Card Industry (PCI) Requirements)**

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue

for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.9 Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated September 14, 2016. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

## **Article 12 MacBride Principles And Signature**

**12.1 MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

### **Article 13 Large Vehicle Driver Safety Training Requirements**

**13.1** Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

**13.2** By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

|  |   |
|--|---|
| <p><b>CITY</b></p> <p><b>San Francisco<br/>Municipal Transportation Agency</b></p> <hr/> <p>Edward D. Reiskin<br/>Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____<br/>Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera<br/>City Attorney</p> <p>By: _____<br/>Isidro A. Jiménez<br/>Deputy City Attorney</p> | <p><b>CONTRACTOR</b></p> <p>Katz and Associates, Inc. and Barbary Coast Consulting, a joint venture</p> <hr/> <p>Lewis Michaelson<br/>President<br/>Katz and Associates<br/>5440 Morehouse Drive, Suite 1000<br/>San Diego, CA 92121</p> <p>City vendor number: <b>52651</b></p> <hr/> <p>Lisbet Sunshine<br/>President<br/>Barbary Coast Consulting<br/>25 Taylor Street<br/>San Francisco, CA 94102</p> <p>City vendor number: <b>82639</b></p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> |
|--|---|

**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- C: Contractor Checklist for Document Submittals
- D: U.S. DOT Federal Requirements for Personal Services Contracts
- E: Disadvantaged Business Enterprise Information (Professional Services Insert)

## **Appendix A Scope of Services**

### **I. Policy Context**

Contractor shall use the SFMTA's Public Outreach and Engagement Team Strategy (POETS) as guidance in preparing strategies, engagements, and Deliverables that are consistent with the SFMTA's standards below. All Task Orders are in place to help ensure the Project Managers meet the needs of community stakeholders while supporting the SFMTA's key policies, including but not limited to:

- a. SFMTA FY 2013-18 Strategic Plan:  
<https://www.sfmta.com/sites/default/files/pdfs/FY%202013%20-%20FY%202018%20SFMTA%20Strategic%20Plan.pdf>
- b. Transit First Policy (SF Charter, Article VIIA, SEC. 8A.115):  
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- c. POETS
- d. SFMTA Brand Standards
- e. Complete Streets Policy (SF Public Works Code, Article II, SEC. 2.4.13):
- f. [http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- g. Vision Zero Goal <http://visionzerosf.org/>
- h. Better Streets Plan: <http://www.sfbetterstreets.org/>
- i. Bicycle Strategy [https://www.sfmta.com/sites/default/files/BicycleStrategyFinal\\_0.pdf](https://www.sfmta.com/sites/default/files/BicycleStrategyFinal_0.pdf)
- j. Pedestrian Strategy <http://archives.sfmta.com/cms/rpedmast/documents/1-29-13PedestrianStrategy.pdf>
- k. Walk First Program <http://walkfirst.sfplanning.org/>

### **II. Scope of Services**

#### **A. General Description of Services**

Contractor will generally support SFMTA project teams with planning, crafting, and delivering best practices, and culturally competent outreach and engagement with stakeholder communities and the public at-large. Depending on the needs of the SFMTA and project team, a Task Order may include a request for comprehensive services for a project – from strategy/planning to execution and evaluation – or be limited to specific services or phases of the project.

## B. Specific Tasks

Specific Services may include, but are not limited to, the following tasks:

- 1) Planning for Public Outreach and Engagement
  - a) Create effective public participation plans that account for project requirements, funding needs, and other related SFMTA projects. Contractor shall work with Project Managers to develop all necessary planning as outlined by POETS for the assigned project. Plans must be consistent with the POETS and utilize industry best practices in public participation, such as those developed by the International Association for Public Participation (IAP2).
  - b) Develop communications assessments that consider, but are not limited to, the following elements:
    - i) Project objectives, goals, and requirements
    - ii) Key stakeholders and project impacts by stakeholder
    - iii) Communications and outreach priorities
    - iv) Effectiveness metrics and methods of evaluation
    - v) Timelines for outreach in coordination with project planning, environmental clearance, design, construction, and evaluation stages, as well as public hearings, SFMTA Board meetings, scoping hearings, or other required Federal, State or local approvals.
  - c) Develop outreach and communication plans that support project goals and objectives for public participation plans.
    - i) Create a comprehensive communications and outreach strategy that engages diverse stakeholders (including people left out of primary stakeholder groups, such as merchant and neighborhood associations), other affected parties and the public-at-large.
    - ii) Outline communications and outreach tactics through key project phases.
    - iii) Identify opportunities for early outreach and engagement.
    - iv) Develop a toolkit of customized approaches to engage stakeholders on the project.
    - v) Compile a customized stakeholder contact list.
    - vi) Outline key messages.
    - vii) Identify coaching and training needs for Project Manager and staff, including media training, active listening, facilitation and mediation, negotiations, and handling difficult people and situations.

## 2) Implementation of Public Outreach and Engagement

- a) Assist with the implementation of outreach meetings
  - i) Schedule and reserve venues and provide logistical support for outreach meetings, inter- and intra-agency meetings, briefings, outreach at standing community events, tours and site visits, including transportation access, presentation set-up, sign-in, materials production, and other duties as assigned.
  - ii) Ensure broad awareness among relevant audiences of scheduling and content for stakeholder and outreach meetings.
  - iii) Develop presentations (e.g., PowerPoint) and presentation boards for meetings.
  - iv) Provide meeting facilitation.
  - v) Record meeting minutes, transcribe audio visual recordings, and draft meeting debriefs.
  - vi) Track meeting attendance.
  
- b) Collect and manage stakeholder engagement and feedback
  - i) Conduct and facilitate formal and informal focus groups.
  - ii) Design and administer surveys using different formats, including online, phone, intercept, and in-person interviews.
  - iii) Hold design charrettes.
  - iv) Solicit on-site, in-person feedback.
  - v) Conduct balloting or other voting mechanisms.
  - vi) Set up and monitor hotlines, including working with 311 staff to triage project-related calls; create new hotlines, as appropriate.
  - vii) Aggregate feedback to allow for detailed reporting and trend analysis.
  - viii) Prepare detailed outreach history summaries in preparation for legislative action or completion of project community phase, including:
    - (1) Reports documenting all public engagement activities
    - (2) Photographs from engagement events
    - (3) Compilation of main engagement themes (as described above)
    - (4) Counts and analysis of the number of individuals and stakeholder groups participating
  - ix) Identify and procure specific collection and measurement tools, as needed.
  
- c) Maintain stakeholder contacts and correspondence
  - i) Monitor, track and provide follow-up responses to constituent correspondence.
  - ii) Manage stakeholder concerns about scheduling meetings, logistics, and notification protocol.
  - iii) Update and maintain project stakeholder contact database, including constituents who are on- and offline.

- iv) Develop expanded stakeholder mailing lists for mailings and email blasts to reach a broad public audience.
- 3) Design and Development of Communications Materials
- a) Collateral Materials
    - i) Following the SFMTA’s brand standards, write and design culturally relevant project collateral materials, such as fact sheets, mailers, reports, and presentation decks, and templates using maps, infographics, diagrams, renderings, illustrations, and photographs.
    - ii) Translate materials for non-English language speakers on request.
    - iii) Ensure collateral formats are compliant with ADA accessibility standards.
  - b) Digital Assets
    - i) Assist in development and implementation of digital communications to support web pages, emails, blogs and social media.
    - ii) Draft project information for websites and for social media.
    - iii) Ensure digital assets are compliant with ADA accessibility standards.
    - iv) Provide social media monitoring services.
  - c) Video Production
    - i) Write, produce and edit videos that increase public understanding of project.
    - ii) Develop public dissemination plan for videos.
    - iii) Translate videos for non-English language speakers on request.
  - d) Miscellaneous Items
    - i) Develop customized give-away materials (i.e., “swag”) that support public interest and engagement.
    - ii) Procure miscellaneous materials and supplies for meetings and presentations.

**Appendix B  
Calculation of Charges**

Per Section 3.3.2, in addition to the rates shown below, Contractor may charge City a 5% markup on Subcontractor labor. Contractor shall itemize the markup in every invoice

| <b>Position</b>              | <b>Unburdened<br/>Hourly Rate</b>   | <b>Audited<br/>Overhead<br/>Rate</b> | <b>Fixed<br/>Contractor<br/>Fee (Cap)</b> | <b>Not-to-Exceed<br/>Fully Burdened<br/>Hourly Rate</b> |
|------------------------------|---|--------------------------------------|---|---|
| <b>KATZ &amp; ASSOCIATES</b> |   |                                      |   |   |
| Principal in Charge          | \$71.17   | 181%                                 | 10%                                       | \$220.00  |
| Managing Partner             | \$48.07   | 181%                                 | 10%                                       | \$148.58  |
| Senior Comm.<br>Manager      | \$46.63   | 181%                                 | 10%                                       | \$144.13  |
| Senior Comm.<br>Manager      | \$39.90   | 181%                                 | 10%                                       | \$123.33  |
| Communications<br>Manager    | \$36.05   | 181%                                 | 10%                                       | \$111.43  |
| Community Eng.<br>Spec.      | \$33.65   | 181%                                 | 10%                                       | \$104.01  |
| Community Eng.<br>Spec.      | \$30.28   | 181%                                 | 10%                                       | \$97.15   |
| Project Assistant            | \$26.44   | 181%                                 | 10%                                       | \$81.72   |
| Graphic Designer             | \$28.84   | 181%                                 | 10%                                       | \$89.14   |
| <b>Staff Accountant</b>      | <b>\$23.22</b>  | 181%                                 | 10%                                       | <b>\$71.79</b>  |
| <b>Barbary Coast</b>         |   |                                      |   |   |
| Principal in Charge          | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                                      |   | \$220.00  |
| Vice President               |   |                                      |   | \$185.00  |
| Director                     |   |                                      |   | \$170.00  |
| Account Manager              |   |                                      |   | \$150.00  |
| Senior Project<br>Manager    |   |                                      |   | \$150.00  |
| Senior Project<br>Manager    |   |                                      |   | \$150.00  |
| Project Manager              |   |                                      |   | \$125.00  |
| Project Assistant            |   |                                      |   | \$60.00   |

| Position   | Unburdened Hourly Rate  | Audited Overhead Rate | Fixed Contractor Fee (Cap) | Not-to-Exceed Fully Burdened Hourly Rate |
|--|---|-----------------------|----------------------------|--|
| <b>51 West Media</b>   |   |                       |                            |  |
| Executive Producer   | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                       |                            | \$175.50                                 |
| Senior Producer  |   |                       |                            | \$150.43                                 |
| Senior Producer  |   |                       |                            | \$150.43                                 |
| Producer   |   |                       |                            | \$100.28                                 |
| Producer   |   |                       |                            | \$100.28                                 |
| Production Assistant   |   |                       |                            | \$60.18                                  |
| Editor   |   |                       |                            | \$81.48                                  |
| <b>Caribou Public Relations, Inc.</b>  |   |                       |                            |  |
| Outreach Manager   | \$93.57   | 70%                   | 10%                        | \$174.98                                 |
| Outreach Manager   | \$93.57   | 70%                   | 10%                        | \$174.98                                 |
| Street Team Members  | \$26.69   | 70%                   | 10%                        | \$49.91                                  |
| <b>JBR Partners Inc.</b>   |   |                       |                            |  |
| Programs Director  | \$84.75   | 136%                  | 10%                        | 220.00*                                  |
| Operations Director  | \$49.00   | 136%                  | 10%                        | \$127.20                                 |
| Field Supervisor   | \$34.62   | 136%                  | 10%                        | \$89.87                                  |
| Ambassadors  | \$19.26   | 136%                  | 10%                        | \$50.00                                  |
| <b>lowercase production</b>  |   |                       |                            |  |
| Principal  | \$75.00   | 79%                   | 10%                        | \$147.68                                 |
| Project Manager  | \$60.00   | 79%                   | 10%                        | \$118.14                                 |
| Designer   | \$55.00   | 79%                   | 10%                        | \$108.30                                 |
| Designer   | \$55.00   | 79%                   | 10%                        | \$108.30                                 |
| Programmer   | \$35.00   | 79%                   | 10%                        | \$68.92                                  |
| <b>Fairbank, Maslin, Maullin, Metz &amp; Associates, Inc. (FM3 Research)</b> |   |                       |                            |  |
| COO  | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                       |                            | \$200.00                                 |
| Associate  |   |                       |                            | \$160.00                                 |
| Research Manager   |   |                       |                            | \$170.00                                 |
| Director   |   |                       |                            | \$180.00                                 |
| Director   |   |                       |                            | \$180.00                                 |
| Partner/Principal  |   |                       |                            | \$220.00                                 |

| <b>Position</b>                       | <b>Unburdened Hourly Rate</b>   | <b>Audited Overhead Rate</b> | <b>Fixed Contractor Fee (Cap)</b> | <b>Not-to-Exceed Fully Burdened Hourly Rate</b> |
|---------------------------------------|---|------------------------------|-----------------------------------|---|
| <b>Greenway Consulting</b>            |   |                              |                                   |   |
| Facilitator                           | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$125.00  |
| <b>RDJ Enterprises LLC</b>            |   |                              |                                   |   |
| Outreach Specialist                   | \$38.46   | 134%                         | 10%                               | \$99.00   |
| Outreach Coordinator                  | \$41.83   | 134%                         | 10%                               | \$107.67  |
| Outreach Manager                      | \$84.14   | 134%                         | 10%                               | \$216.58  |
| <b>The Participation Company LLC</b>  |   |                              |                                   |   |
| Senior Strategist/Technical Analyst   | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$220.00  |
| Senior Facilitator/Dispute Resolution |   |                              |                                   | \$200.00  |
| Communication Specialist              |   |                              |                                   | \$125.00  |
| <b>InterEthnica Inc.</b>              |   |                              |                                   |   |
| Principal/Cultural Contractor         | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$150.00  |
| Account Manager                       |   |                              |                                   | \$125.00  |
| Project Manager                       |   |                              |                                   | \$125.00  |
| Graphic Designer                      |   |                              |                                   | \$125.00  |
| Illustrator                           |   |                              |                                   | \$101.75  |
| Typesetter                            |   |                              |                                   | \$101.00  |
| Outreach Staff                        |   |                              |                                   | \$75.01   |
| Outreach Lead                         |   |                              |                                   | \$95.00   |
| Editor                                |   |                              |                                   | \$101.75  |
| Senior Interpreter                    |   |                              |                                   | \$184.99  |
| Interpreter                           |   |                              |                                   | \$172.98  |
| Researcher                            |   |                              |                                   | \$150.00  |
| Assistant Researcher                  |   |                              |                                   | \$95.00   |
| Intern                                |   |                              |                                   | \$50.88   |
| Meeting Assistants                    |   |                              |                                   | \$50.88   |
| Photographer                          | \$183.15  |                              |                                   |   |



| Position                           | Unburdened Hourly Rate  | Audited Overhead Rate | Fixed Contractor Fee (Cap) | Not-to-Exceed Fully Burdened Hourly Rate |
|------------------------------------|---|-----------------------|----------------------------|--|
| <b>InterEthnica Inc. continued</b> |   |                       |                            |  |
| Sound Technician                   | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                       |                            | \$152.62                                 |
| Voice over Talent                  |   |                       |                            | \$125.00                                 |
| Administration                     |   |                       |                            | \$76.29                                  |

**InterEthnica Interpretation Cancellation Clause**

In the event an assignment is cancelled less than 24 hours prior to a meeting or event, the client agrees to pay the full cost of the interpretation.

**InterEthnica Audio Translation Equipment**

Headset \$18 per head set

Translation transmitter \$125 per day

Delivery, set-up and equipment test \$125 per event.

On site audio technician available will be billed at \$125 per hour.

Translation minimum charge of \$125 per language.

This applies to documents that contain a word count of 200 or less.

\*The exception to this rule is advertising and slogan translation, which is charged at an hourly rate of \$125.

Translation rates are \$0.27 to \$0.40 per word depending on the language and the complexity of the source text.

Spanish - \$0.27 per word

Hmong - \$0.32 per word

Arabic - \$0.30 per word

Russian - \$0.32 per word

Chinese - Mandarin and Cantonese - \$0.30 per word

Vietnamese - \$0.32 per word

Tagalog - \$0.35 per word (Tagalog/ Filipino recently was raised due to the high demand)

Japanese - \$0.32 per word

Korean - \$0.32 per word

Punjabi - \$0.32 per word

These rates include translation, proofreading, and one round of client requested revisions. Our translators are all native speakers of the target language and live locally.

**Appendix C**  
**Contractor Checklist for Document Submittals**

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)**

Task Order Number: \_\_\_\_\_

Task Order Title: \_\_\_\_\_

This checklist must be filled in by the contractor and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

1. Document is edited for grammatical and typographical errors, clarity, and format.
2. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
3. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
4. All document sections, tables, figures, appendices, etc. are submitted.
5. Footnotes are on same page as the reference (no endnotes).
6. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
7. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
8. Data in tables and figures are cross-checked with text.
9. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
10. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
11. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
12. All document background reports are finalized and included with the submittal packet.
13. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Contractor at the Task Order level:
  - a. Date / Times;
  - b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
  - c. Name and contact information of contractor performing the count effort;
  - d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:

- i. For Machine Counts: Street Name\_Direction of Approach\_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)
  - ii. For Turning Movement Counts by Hand: Street Name\_Cross Street\_Time of Day (i.e., LAGUNA CLAY PM);
- 
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
  - f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
  - g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

**Notes:**

Firm Name: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix D

# U.S. DOT FEDERAL REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

### I. DEFINITIONS

- A. **Approved Project Budget** means the most recent statement, approved by the U.S. DOT, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. **California Department of Transportation (Caltrans)** is an agency of the State of California and a direct recipient of grant funds from FHWA.
- C. **City means** the City and County of San Francisco, a municipal corporation, and its departments and agencies.
- D. **Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from U.S. DOT.
- E. **Cooperative Agreement** means the instrument by which U.S. DOT awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which U.S. DOT takes an active role or retains substantial control.
- F. **Federal Highway Administration (FHWA)** is an operating administration of the U.S. DOT.
- G. **Federal Directive** includes any federal circular, notice, order or guidance providing information about DOT or FHWA programs, application processing procedures, and Project management guidelines.
- H. **Grant Agreement** means the instrument by which FHWA, acting through CalTrans, awards federal assistance to a specific Recipient to support a particular Project, and in which FHWA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- I. **Government** means the United States of America and any executive department or agency thereof.
- J. **Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement. For FHWA projects, the term "Project" means the task or set of tasks listed as described in the grant application and grant agreement between Caltrans and the Subrecipient.
- K. **Recipient** means any entity that receives federal assistance from U.S. DOT, FTA, FHWA or through CalTrans using DPT funds to accomplish the Project. For the purpose of this Agreement, Recipient is the City.
- L. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.

- M. **Subrecipient** means the San Francisco Municipal Transportation Agency, an agency of the City and County of San Francisco, which receives Federal assistance through Caltrans.
- N. **Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by U.S. DOT.
- O. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from U.S. DOT.
- P. **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

## II. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in any grant agreement for work under this Agreement, 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.

## III. ACCESS TO RECORDS

- A. The Contractor agrees to provide the City and County of San Francisco, the U.S. DOT Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the U.S. DOT Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

## IV. DEBARMENT AND SUSPENSION

The City is prohibited from making any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." By submitting a Proposal, and separately by executing this Agreement, Contractor certifies that it is not debarred or otherwise prohibited from bidding on, proposing for, and entering into this Agreement.

This is a material representation of fact by Contractor that City will rely upon in determining Contractor's responsibility and eligibility for award of the Agreement. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in

addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR Parts 180, Subpart C and 1200, Subpart C while its Proposal is valid and throughout the term of this Agreement and any other contract with the City. Contractor shall a provision requiring compliance with those authorities and this Section in its subcontracts and other lower tier covered transactions.

## **V. COST PRINCIPLES**

- A. Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Contractor to City.
- D. All reimbursements to Contractor will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

## **VI. TRAVEL AND PER DIEM PAYMENTS**

Reimbursements to Contractor and its subcontractors for travel and subsistence (per diem) expenses shall not exceed rates authorized to be paid rank and file California State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by Contractor are in excess of DPA rates, Contractor is responsible for the cost difference, and any overpayments inadvertently paid by City shall be reimbursed to City by Contractor on demand within 30 days of invoice.

## **VII. ACCOUNTING SYSTEM**

Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs by line item for the Project. The accounting system of shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by City.

## **VIII. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor; to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or

violation of this warranty, the SFMTA shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **IX. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

- A. The City 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 the City, 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 U.S. DOT. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **X. 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, 41 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 U.S. DOT 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. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR 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 U.S. DOT 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 U.S. DOT 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 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements U.S. DOT may issue.
- C. **Flowdown to Subcontractors.** The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by U.S. DOT, modified only if necessary to identify the affected parties.
- D. **Contract Assurance.** The Contractor and its subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or its subcontractors 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 SFMTA deems appropriate.

## **XI. CIVIL RIGHTS – STATE**

- A. In the performance of this Agreement, Contractor and its subcontractors shall not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its subcontractors shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. 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. Contractor and its subcontractors shall post in conspicuous places, available to employees for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment section.
- B. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.
- C. Contractor shall include the above provisions in all subcontractors to perform work under this Agreement.



## **XII. DBE/SBE ASSURANCES**

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or subcontractor 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 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor 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 SFMTA deems appropriate.

## **XIII. PATENT RIGHTS** (*applicable to contracts for experimental, research, or development projects financed by the U.S. DOT*)

- A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the U.S. DOT.
- B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through U.S. DOT, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.

## **XIV. RIGHTS IN DATA AND COPYRIGHTS** (*Applicable to contracts for planning, research, or development financed by U.S. DOT*)

- A. **Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

B. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.

1. **Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

2. **Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:

- a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
- b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by U.S. DOT.

3. **U.S. DOT Intention.** When U.S. DOT awards Federal assistance for an experimental, research or developmental work, it is U.S. DOT's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless U.S. DOT determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit U.S. DOT to make available to the public, either U.S. DOT's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City’s use the costs of which are financed with Federal transportation funds for capital projects.

4. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

5. **Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or

be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

**6. Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

**7. Application to Subcontractors.** Unless U.S. DOT determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.

C. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.

D. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through U.S. DOT, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

XV. **CONTRACT WORK HOURS AND SAFETY STANDARDS** (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

A. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. **Withholding for unpaid wages and liquidated damages** - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor,

- D. or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- E. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

## **XVI. ENERGY CONSERVATION REQUIREMENTS**

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.

## **XVII. CLEAN WATER REQUIREMENTS**

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

## **XVIII. CLEAN AIR**

- A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to U.S. DOT and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by U.S. DOT.

## **XIX. PRIVACY**

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, 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 Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. 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 U.S. DOT.

## **XX. TERMINATION FOR CONVENIENCE OF CITY**

See Agreement Terms and Conditions.

**XXI. TERMINATION FOR DEFAULT**

See Agreement Terms and Conditions.

**XXII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

- 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 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, 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 U.S. DOT-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 U.S. DOT 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 U.S. DOT. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**XXIII. FLY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**XXIV. SAFETY**

- a. Contractor shall comply with California OSHA regulations applicable to Contractor regarding necessary safety equipment or procedures. Contractor shall comply with safety instructions issued by SFMTA’s Safety Officer and other SFMTA representatives.
- b. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

**XXV. TEXTING WHILE DRIVING; DISTRACTED DRIVING**

Consistent with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm> ) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

**XXVI. SEAT BELT USE**

In compliance with Executive Order 13043 “Increasing Seat Belt Use in the United States”, April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

**XXVII. INCORPORATION OF DOT TERMS**

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

## Appendix E

### DISADVANTAGED BUSINESS ENTERPRISE INFORMATION (PROFESSIONAL SERVICE INSERT)

#### 1.1 FEDERAL HIGHWAY ADMINISTRATION (FHWA) FUNDED CONTRACTS

- A. This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR 26) entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” The regulations in their entirety are incorporated herein by this reference.
- B. Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26.5 are encouraged to participate in this Contract. The Contractor shall ensure that DBEs have the opportunity to participate in the performance of this Contract and shall take all necessary and reasonable steps for this assurance. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

#### 1.2 TERMS AS USED IN THIS DOCUMENT

- A. **Annual Anticipated DBE Participation Level (AADPL)**: The level of participation that the local agency would expect DBEs to achieve in the absence of discrimination and the effects of past discrimination on federal-aid contracts awarded in its jurisdiction in a given Federal Fiscal Year. This includes an assessment of the availability for specific items of work that DBEs could reasonably be expected to compete for subcontracting opportunities on a federal-aid contract and their likely availability for work on federal-aid contracts that will be awarded in a given fiscal year. The AADPL is not a goal that the local agency needs to achieve, but the AADPL will be used by Caltrans to establish a statewide overall DBE participation goal as required by Title 49, Part 26 of the CFR. The local agency must have an approved AADPL on file with the DLAE before federal funds can be authorized on any new federal-aid contractor or construction contract.
- B. **Disadvantaged Business Enterprise (DBE)**: A for-profit “small business concern” is as defined in 49 CFR 26.65 that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must also control the management and daily business operations. These individuals must be citizens of the United States and (1) any individual who the City finds to be a socially and economically disadvantaged individual on a case-by-case basis, or (2) who are either Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, or any other group found to be socially and economically disadvantaged by the Small Business Administration. This definition was revised in 1987 to include women.

#### 1.3 DBE PROGRAM

## SFMTA FHWA DBE PROGRAM

- A.** Bidders shall be fully informed in respect to the requirements of the referenced federal DBE regulations and the DBE program developed by the California Department of Transportation pursuant to those regulations. Attention is directed to the following matters:
1. A DBE must be a small business concern as defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
  2. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, as a vendor of material or supplies, or as a trucking company.
  3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
  4. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
  5. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
  6. A prime contractor who is a certified DBE is eligible to claim all of the work in the contract toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.
  7. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
    - a. The Caltrans "Civil Rights" web site at:  
<http://www.dot.ca.gov/hq/bep>
    - b. The Caltrans DBE Directory: This Directory may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.
- B.** When reporting DBE participation, bidders may count the cost of materials or supplies purchased from DBEs as follows:
1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
  2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business



## SFMTA FHWA DBE PROGRAM

and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph B.2. if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph B.2.

3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

- C.** When reporting DBE participation, bidders may count the participation of DBE trucking companies as follows:
1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
  2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract;
  3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs;
  4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract;
  5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE;
  6. For the purposes of this paragraph C, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- D.** When a DBE performs as a participant in a joint venture, a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will counted toward the DBE participation.

**E. PROMPT PAYMENT**

No later than three (3) working days from the date of Contractor's receipt of progress

## SFMTA FHWA DBE PROGRAM

payments by the City, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors, unless the prime contractor notifies CCO in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime contractor and the subcontractor. Within five (5) working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractors.

Contractor may withhold retention from subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within thirty (30) days of City's payment of retention to Contractor for satisfactory completion of all work required of a subcontractor, Contractor shall release any retention withheld to the subcontractor. Satisfactory completion shall mean when all the tasks called for in the subcontract with subcontractor have been accomplished and documented as required by City.

If the Contractor does not pay its subcontractor as required under the above paragraph, it shall pay interest to the subcontractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

# SFMTA FHWA DBE PROGRAM

## 1.4 POST AWARD FORMS:

### 1. SFMTA FORM No. 6 - PROGRESS PAYMENT REPORT

This form shall be completed by Contractor, including each joint venture partner, if applicable, and submitted to the Project Manager (copy to CCO) with its monthly progress payment applications after award of Contract. Contractors must provide complete information and documentation on SFMTA FORM No. 6 for the immediately preceding period for DBE joint venture partners and all subcontractors that are utilized on the Contract.

### 2. SFMTA FORM No. 7 - SUBCONTRACTOR PAYMENT

**DECLARATION** Contractor shall complete SFMTA FORM No. 7 and submit it to CCO (copy to Project Manager) within five (5) working days following each payment to subcontractors in compliance with prompt payment requirements. Note: This form shall provide evidence that the Contractor has complied with the prompt payment provisions of the Contract.

### 3. SFMTA FORM No. 8 – DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICES CONTRACTS

This form shall be completed when processing all modifications, supplements or change orders that cumulatively increase the original amount of the contract. All prime contractors, individual joint venture partners, subcontractors and any other vendors participating in the modification must be listed.

### 4. EXHIBIT 17-F FINAL REPORT UTILIZATION OF DISADVANTAGED BUSINESSES

Contractor, including all joint venture partners, if any, shall complete Exhibit 17-F and submit it to the Project Manager (copy to CCO) with its final progress payment application. Contractor must provide complete and accurate information on Exhibit 17-F and have it executed by all DBE joint venture partners and all subcontractors.

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Katz and Associates/Barbary Coast (Joint Venture)**

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**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Katz and Associates/Barbary Coast (Joint Venture)  
Contract No. SFMTA2016-40/1 (FTA)**

This Agreement is made this 18th day of April, 2017, in the City and County of San Francisco, State of California, by and between Katz and Associates, 5440 Morehouse Drive, Suite 1000, San Diego, CA 92121, and Barbary Coast Consulting, 995 Market Street, 2<sup>nd</sup> Floor, San Francisco, CA 94103, a joint venture (Contractor) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

- A.** The SFMTA wishes to contract with a qualified public relations firm for public outreach and engagement services to be provided on an as-needed basis.
- B.** The SFMTA issued a Request for Proposals (RFP) on July 29, 2016 and selected Contractor as the highest qualified scorer pursuant to the RFP.
- C.** The Small Business Entity (SBE) subcontracting participation requirement for this Agreement is 35 %.
- D.** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- E.** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 41409-15/16 on 01/04/2016.

Now, THEREFORE, the Parties agree as follows:

**Article 1      Definitions**

The following definitions apply to this Agreement:

- 1.1 Agreement:** This contract document and all referenced appendices to this Agreement, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference.
- 1.2 Award:** Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute the Contract with the selected proposer.
- 1.3 CCO:** Contract Compliance Office of the SFMTA.

**1.4 City:** The City and County of San Francisco, a municipal corporation, acting by and through the SFMTA.

**1.5 CMD.** The Contract Monitoring Division of the City.

**1.6 Contractor:** Katz and Associates/Barbary Coast (Joint Venture)

**1.7 Days:** Unless otherwise designated, the word “Days” refers to working days of the City, which are generally Monday through Friday, excluding holidays. The use of the term “days,” “working days” or “business days” in this Agreement shall be synonymous.

**1.8 Deliverables:** Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

**1.9 Director:** The Director of Transportation of the SFMTA or his/her designee.

**1.10 Effective Date:** The date on which the City's Controller certifies the availability of funds for this Agreement as provided in Section 2.1.

**1.11 Federal Transit Administration (FTA):** An operating administration of the U.S. Department of Transportation.

**1.12 Key Personnel:** The personnel named in Section 4.6.

**1.13 Mandatory City Requirements:** Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.

**1.14 Notice To Proceed (NTP):** A letter or email from the Project Manager notifying Contractor of the day when work is to commence under each Task Order.

**1.15 Party(ies):** The City and Contractor, either collectively or individually.

**1.16 Project Manager:** The designated SFMTA employee who will assume all duties and responsibilities to manage each Task Order.

**1.17 Proposal:** The Contractor's written response to the RFP, or a written request for a proposal for the performance of a Task Order, as the context requires.

**1.18 Purchase Order:** A written order issued by the SFMTA to the Contractor, authorizing the start of work under each Task Order.

**1.19 Request for Proposals (RFP):** The Request for Proposals for As-Needed Public Outreach and Engagement Services issued by the SFMTA on July 29, 2016.

**1.20 San Francisco Municipal Transportation Agency (SFMTA):** The agency of the City with jurisdiction over surface transportation in San Francisco, as provided in the San Francisco Charter Article VIII.A.

**1.21 Services:** The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, and further described by the Task order, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

**1.22 Small Business Enterprise or SBE:** A for-profit, small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Code of Federal Regulations (CFR), Part 26.5.

**1.23 Subcontractor:** Any firm under contract to the Contractor for Services under this Agreement.

**1.24 Task Order:** A written directive from the SFMTA to Contractor to perform specified Services under this Agreement.

## **Article 2 Term of the Agreement**

**2.1** The term of this Agreement shall commence on the latter of: (i) April 18, 2017 or (ii) the Effective Date, and shall expire on April 18, 2019 unless earlier terminated as otherwise provided herein.

**2.2** The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **Article 3 Financial Matters**

**3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

### **3.3 Compensation.**

**3.3.1 Payment Amount.** Contractor's compensation for the Services shall be based on either: (1) a negotiated lump-sum price per task or Deliverable (which includes all direct and indirect costs, wages and benefits, overhead, profit, and all other costs) for each Task Order; or (2) a negotiated number of hours per task or Deliverable using the hourly rates set forth in Appendix B (Calculation of Charges) plus a fixed contractor fee, and subject to a total amount not to exceed. In no event shall the amount of this Agreement for all Task Orders exceed one million seven hundred fifty thousand dollars (\$1,750,000).

**3.3.2 Method of Computing Hourly Compensation.** For Services paid for on an hourly basis, the SFMTA shall pay Contractor the applicable hourly rates plus fixed contractor fees, the sum of which equals the fully burdened hourly rates. The hourly rate shall be the sum of the applicable unburdened hourly rate and overhead rate shown in Appendix B. The fixed contractor fee shall cover profit, non-compensable overhead, and other operating costs; the Parties shall negotiate the fixed contractor fee on a Task Order basis, subject to the cap for each fixed contractor fee set forth in Appendix B. In cases where Contractor or a Subcontractor are SBEs or sole proprietors without audited hourly rates, the Parties have negotiated the flat fully burdened hourly rates, inclusive of profit, non-compensable overhead, and other operating costs, set forth in Appendix B. Contractor's mark-up for managing Subcontractors shall be no more than 5% of the fully burdened hourly rate

**(a) Unburdened Hourly Rates.** The unburdened hourly rates (i.e., gross wages or salaries paid to personnel that perform the Services) shown in Appendix B shall be fixed until 24 months after the Effective Date, and may be adjusted thereafter only if the City exercises its option to extend the term of the Agreement. Any adjustment to the hourly rates in Appendix B shall be negotiated by the Parties, except that no adjustment shall exceed the corresponding annual increase in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for All Urban Consumers. No hourly rate shall be adjusted without prior written approval of the SFMTA.

**(b) Overhead Rates.** The overhead rates shown for Contractor and each Subcontractor in Appendix B are estimates of actual overhead rates and may be adjusted after 24 months with prior written approval from the Director of Transportation. Contractor's

and Subcontractors' combined unburdened hourly rates and overhead rates are subject to audit in compliance with Federal requirements.

The overhead rates attached as Appendix B, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within 180 days of the end of Contractor's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Contractor shall submit to the Project Manager Contractor's and all Subcontractors' actual rates during the term of this Agreement. For each rate paid to the Contractor that exceeds the Contractor's or any Subcontractor's actual rate, the Contractor shall reimburse to the City the total difference between the rate paid and Contractor's or Subcontractor's actual rate during the term of this Agreement. Contractor shall reimburse City within 30 days of written notice from City seeking reimbursement. For each actual overhead rate of Contractor or Subcontractor that exceeds the rate paid to Contractor, City shall pay to Contractor the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Contractor within 60 days of City's receipt of all of Contractor's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Contractor's rates as provided above.

(c) **Reimbursable Costs.** This Agreement is subject to federal regulations concerning the reimbursement and audit of expenses, costs and overhead as set in the regulation "Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards," at in 2 CFR Part 200 et seq. ("Federal Cost Requirements") Contractor acknowledges that it is familiar with the Federal Cost Requirements. Contractor shall not seek reimbursement and the City shall not pay reimbursement to Contractor for costs (including but not limited to direct costs, indirect costs, and overhead) that are not compensable under the Federal Cost Requirements. Contractor understands and acknowledges that the City shall not reimburse Contractor for Contractor's costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments to Contractor under this Agreement are subject to audit and adjustment in accordance with the requirements and standards set out in the Federal Cost Requirements.

(d) **Out-of-Pocket Expenses.** The SFMTA shall reimburse Contractor for Contractor's and Subcontractors' actual costs of approved out-of-pocket expenses. Compensation for materials and other approved out-of-pocket expenses, other than travel, shall be at direct cost, plus a mark-up not to exceed 5%. Compensation for travel-related expenses shall be at direct cost without mark-up. The mark-up for media buys shall not exceed 7%. The mark-up for media buys shall be applied by either the Contractor or Subcontractor, whichever is making the purchase, and shall not be combined with the 5% mark-up for other approved out-of-pocket expenses. All out-of-pocket expenses must be pre-approved in writing by the Project Manager. For travel expenses, airfare must be coach class only and reasonable; reservations must be made in a timely fashion to receive the lowest rate possible. Vehicle expenses for travel will only be reimbursed if the travel is outside of a 100-mile radius of the City. Payment for

travel related costs shall not exceed U.S. General Services Administration (GSA) per diem and mileage rates. Legible receipts for all expenses, including travel, must accompany the invoice, or City reserves the right to refuse reimbursement of expenses until receipts are provided.

(e) **Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile, and telecommunication expenses shall not be tracked or reimbursed separately as out-of-pocket costs. Contractor and Subcontractor personnel relocation costs and entertainment or personal expenses shall not be reimbursable under this Agreement. Office and field supplies/equipment expenses shall not be reimbursed unless Contractor demonstrates these supplies and equipment are out of the ordinary, necessary, and used exclusively to provide the Services. If the SFMTA determines that office and field supplies/equipment expenses out of the ordinary, necessary, and used exclusively to provide the Services, such expenses must be pre-approved in writing by the Project Manager. Vehicle expenses for travel within a 100-mile radius of the City will not be reimbursable.

(f) **Use of Public Transportation.** The City has a transit-first policy, and the SFMTA encourages Contractor and Subcontractors to use public transit in performance of the Services to the maximum extent possible. The SFMTA will closely review Contractor's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Taxicabs and hired cars are not considered public transit. The SFMTA reserves the right to refuse to reimburse travel expenses that are not in accordance with these policies.

**3.4 Payment.** Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Each Task Order shall include a schedule for payment of each task or Deliverable as agreed to by the Project Manager and Contractor. The schedule for payment shall clearly state when payment shall be made as either a one-time lump sum upon completion, or as a percentage or dollar amount per unit each month as defined in the Task Order. Under special circumstances, and upon pre-approval by the Project Manager, compensation may be made on a time and materials basis. Such compensation shall be clearly documented in the Task Order as the schedule of payment. Project Manager shall be responsible for monitoring the Services performed by Contractor and appropriateness of the monthly invoice amount(s). Compensation shall be made for Services identified in the invoice that the Project Manager, or SFMTA's designee, in his or her sole discretion, concludes have been satisfactorily performed. The SFMTA will pay Contractor within 30 calendar days of receipt of the invoice, unless the SFMTA notifies Contractor that a dispute as to the invoice exists. In no event shall City be liable for interest or late charges for any late payments.

**3.4.1 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables,

including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

**3.4.2 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.4.3 Invoice Format.** Invoices furnished by Contractor under this Agreement shall be in a form acceptable to the Controller and City, and shall include a unique invoice number. Contractor shall submit invoices for all allowable charges incurred in the performance of each Task Order. Contractor shall submit no more than one invoice in a month for each Task Order, and each invoice shall contain the following information:

- a. Contract number;
- b. Task Order number;
- c. Description of the work performed or Services rendered;
- d. Name, position, fully burdened hourly billing rate as set forth in Appendix B, dates and hours worked of employee(s) whose labor is invoiced;
- e. Other direct costs/out-of-pocket expenses itemized and with receipts showing the corresponding order of itemization;
- f. Subcontractor costs supported by invoice itemization in the same format as described above;
- g. Total costs;
- h. Completed SFMTA Task Order Invoice Cover Sheet; and
- i. Payroll records substantiating all labor charges for Contractor and all Subcontractors shown on the invoice.

**3.4.4 SBE Payment .** Contractor must submit all required payment forms to enable CCO to monitor Contractor's compliance with the SBE subcontracting commitments in this Agreement. Contractor shall pay its SBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the SBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required payment forms. Failure to submit all required payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a required forms to verify its payments to SBE subcontractors

**3.4.5 Getting Paid for Goods and/or Services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

### **3.5 Grant-Funded Contracts.**

**3.5.1 Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

**3.5.2 FTA Requirements.** The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Appendix D are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

**3.6 Audit and Inspection of Records.** Contractor shall maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Services. Contractor shall permit the City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this subsection. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.7 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory



penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A, “Scope of Services.” Officers and employees of the City are not authorized to request, and the City is not required to reimburse Contractor for, services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, “Modification of this Agreement.” Contractor shall provide high quality Deliverables that shall require minimal revisions by SFMTA. Contractor shall adhere to the quality assurance guidelines set forth in Appendix C, “SFMTA Contractor Checklist for Document Submittals,” and respond fully and promptly to requests for revisions to initial submittals from the City in order to finalize documents.

**4.2 Priority of Documents.** All requirements of the RFP and the representations made in the Proposal that are not in conflict with provisions of this Agreement are incorporated by reference and made an integral part of this Agreement as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP or Proposal shall control. In case of conflict between the RFP and the Contractor’s/Contractor’s Proposal, the RFP shall govern. Documents listed as Appendices to this Agreement are incorporated by reference as though fully set forth herein.

**4.3 Information and Data.** Contractor shall request in writing any information and data it requires to prepare proposals for or perform the Services described in each Task Order. Contractor shall identify the timing and priority in which this information and data will be required. The Parties shall reach agreement as to the availability and delivery time for this data and information during the Proposal phase for each Task Order.

**4.4 Presentations.** If requested by City, Contractor shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.

**4.5 Task Order Requirements.** The SFMTA will define the requirements of each Task Order. The Parties will agree on the scope of Services, cost, and estimated time to perform each Task Order before Contractor starts work on the Task Order.

**4.5.1 Scope of Services.** The SFMTA will prepare the scope of Services and expected time of completion for each Task Order, and send the scope of Services to Contractor with a written request for a Proposal for the performance of the Task Order.

**4.5.2 Contractor Proposal.** Contractor shall prepare and submit a Proposal for each Task Order showing:

(a) A work plan that includes a detailed description by task of the Services to be performed and the means and methods that will be used to perform them;

(b) A schedule by task and Deliverable, including key milestones and/or critical path Deliverables;

(c) A list of Contractor's personnel and Subcontractors (in accordance with Appendix B) assigned to each part of the Services along with: (1) a resume indicating why such personnel are qualified to perform the Services; and (2) a narrative describing the prior experience of personnel and Subcontractors in performing work similar to the Services;

(d) A detailed cost estimate for each task or Deliverable showing:

(i) Estimated hours and hourly rates by position as listed in Appendix B for both Contractor and Subcontractor personnel. Labor hours for preparing monthly invoices or filling out required SBE forms will not be allowed; additional Subcontractor program management labor hours by Contractor will not be allowed. Overtime labor hours will not be allowed without prior written approval from the Project Manager. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

(ii) Estimated reasonable out-of-pocket expenses. Contractor may charge a fixed percentage mark-up for out-of-pocket expenses as set forth in section 3.3.2(d) of this Agreement. All expenses must be pre-approved in writing by the Project Manager.

**4.5.3 Negotiation of Cost.** The Project Manager will review the Proposal and negotiate for each Task Order either a lump-sum price per task or Deliverable, or number of hours per task or Deliverable, as described in Section 3.3.1.

**4.5.4 Record of Negotiations.** The Project Manager will document the negotiations and any agreement in a record of negotiations.

**4.5.5 Subcontracting Goals.** Upon completion of negotiations for each Task Order, Contractor shall provide Project Manager a memo describing the proposed SBE goal associated with the Task Order. The memo shall include a table that lists: (1) all firms performing Services under the Task Order; (2) whether the firm is a SBE, (3) the dollar value and percentage of work attributed with each firm, and (4) the overall calculated SBE goal for the

Task Order. CCO will review the final negotiated Task Order scope and Contractor's SBE goal memo, approve or deny the goal, and issue a memo to file by CMD. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in this Agreement. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall SBE goal set forth in the Agreement.

**4.5.6 Controller Certification.** The City will request certification from the Controller that adequate funds are available to proceed with the Task Order as agreed.

**4.5.7 Notice to Proceed.** After the certification of each Task Order, a Purchase Order will be issued by the City, and the Project Manager will send to Contractor a written NTP and Task Order number. Contractor shall use the Task Order number and Purchase Order when submitting invoices to the City for payment. Contractor shall not commence work under any Task Order until it receives a corresponding Purchase Order and written NTP from the Project Manager.

**4.5.8 Changes.** Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of Services of the Task Order(s). If there is a material change in the scope of work of a task, then a proposal, negotiations, and record of negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a Task Order.

**4.5.9 Failure to Agree on Terms of Task Order.** If the Parties do not reach agreement on the terms of any Task Order, the SFMTA may either cancel the Task Order and have the Services performed by other available sources, or may direct the Contractor to proceed with the Task Order under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances shall Contractor refuse to undertake a City-ordered task.

**4.6 Personnel and Key Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's SFMTA-authorized Subcontractors) to perform the Services. Contractor shall comply with City's reasonable requests regarding assignment and removal of personnel, but all personnel, including those assigned at City's request, shall be supervised Contractor. Contractor shall commit adequate resources to allow timely completion within the set forth in the corresponding Task Order. Contractor agrees that the following personnel (Key Personnel) shall be committed and assigned to provide Services under this Agreement to the level required by SFMTA for the term of the Agreement and, excluding Lewis Michaelson, shall also be staffed at Contractor's local offices within the San Francisco Bay Area for all such time:

Amber Shipley, Barbary Coast  
Peter Lauterborn, Barbary Coast  
Gregory Parks, Katz & Associates  
Lewis Michaelson, Katz & Associates  
Nicolas Townes, Katz & Associates

Contractor shall advise SFMTA immediately any time one of the Key Team Members deviates from its committed role or time on the Task Order (e.g., is assigned to another project). SFMTA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

**4.7 Current Workload and Available Resources.** Contractor covenants that its current workload and the workload of its Subcontractor will not affect the commencement and the progress of the Services performed under this Agreement. Contractor shall have all the necessary professional, technical and support personnel, including those of the Subcontractors, available, ready and mobilized to perform the Services within two weeks of the receipt of NTP on a particular Task Order. In addition, Contractor shall make good faith efforts to execute all applicable Subcontractors within three weeks of NTP. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

**4.8 Transmittal of Deliverables.** When requested by the Project Manager, and after completion of each task or Deliverable, Contractor shall transmit to the SFMTA all work product (duplicates and originals) produced or accumulated in the course of its and its Subcontractors' work on this Agreement. Contractor's project manager and Key Personnel shall have thoroughly reviewed and approved all work product and signed off as such prior to transmitting them to Agency.

**4.9 Reserved (Reproduction of Work Product).**

**4.10 SFMTA's Responsibilities Regarding Deliverables.** The SFMTA shall review and comment on Deliverables generally within 14calendar days of receipt by the SFMTA. The SFMTA and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the approved Task Order. The SFMTA's review and comments of Deliverables shall in no way relieve Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the SFMTA relieve the Contractor of its independent responsibility to provide submittals and Deliverables in full compliance with local, state and federal codes, regulations and standards.

If Contractor considers certain SFMTA review comments or directives, either written or oral, to require work efforts not included in the approved Scope of Services for each Task Order, the Contractor shall provide the SFMTA with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.8 above.

**4.11 Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement,

unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City's execution of this Agreement constitutes approval of the Subcontractor(s) listed below.

- a) 51 West Media
- b) Caribou Public Relations, Inc.
- c) JBR Partners Inc.
- d) lowercase production
- e) Fairbank, Maslin, Maullin, Metz & Associates, Inc. (FM3 Research)
- f) Greenway Consulting
- g) RDJ Enterprises LLC
- h) The Participation Company LLC
- i) InterEthnica Inc.
- j) Seasons Productions
- k) Bang the Table USA LLC

#### **4.12 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

**4.12.1 Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work

only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.12.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

**4.13 Assignment.** The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

**4.14 Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of Services defined in this Agreement and shall also provide coverage for the following risks:

(i) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information, or other personally identifying information, stored or transmitted in electronic form;

(ii) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(iii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

**5.1.2** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

**5.1.3** All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties." All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

**5.1.4** Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

**5.1.5** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

**5.1.6** Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

**5.1.7** The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and Subcontractors.

**5.1.8** If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or



otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, contractors and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT AMOUNT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

**6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor,

or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

**7.1** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

**7.2** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

**7.2.1** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

**7.2.2** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

**7.2.3** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

**7.2.4** Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

**8.1.1** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

**8.1.2** Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by SFMTA.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At SFMTA's direction, assigning to SFMTA any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that SFMTA designates to be completed prior to the date of termination specified by SFMTA.

(f) Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which SFMTA has or may acquire an interest.

**8.1.3** Within 30 days after the specified termination date, Contractor shall submit to SFMTA an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to SFMTA, and any other appropriate credits to SFMTA against the cost of the Services or other work.

**8.1.4** In no event shall SFMTA be liable for costs incurred by Contractor or any of its Subcontractors after the termination date specified by SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

**8.1.5** In arriving at the amount due to Contractor under this Section, SFMTA may deduct: (i) all payments previously made by SFMTA for Services covered by Contractor's final invoice; (ii) any claim which SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

**8.1.6** SFMTA's payment obligation under this Section shall survive termination of this Agreement.

## **8.2 Termination for Default; Remedies.**

**8.2.1** Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

|           |   |
|-----------|---|
| 3.7       | Submitting False Claims.  |
| 4.13      | Assignment  |
| Article 5 | Insurance and Indemnity   |
| Article 7 | Payment of Taxes  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 10.11     | Alcohol and Drug-Free Workplace                                   |
| 11.10     | Compliance with Laws  |

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by

ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**8.2.2** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

**8.2.3** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

**8.2.4** Any notice of default must be sent by registered mail to the address set forth in Article 11.

**8.3 Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such

default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

**8.4.1** This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

|           |   |
|-----------|---|
| 3.4.1     | Payment Limited to Satisfactory Services                          |
| 3.5.1     | Grant Funded Contracts - Disallowance                             |
| 3.6       | Audit and Inspection of Records                                   |
| 3.7       | Submitting False Claims   |
| Article 5 | Insurance and Indemnity   |
| 6.1       | Liability of City   |
| 6.3       | Liability for Incidental and Consequential Damages                |
| Article 7 | Payment of Taxes  |
| 8.1.6     | Payment Obligation  |
| 9.1       | Ownership of Results  |
| 9.2       | Works for Hire  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 11.6      | Dispute Resolution Procedure                                      |
| 11.7      | Agreement Made in California; Venue                               |
| 11.8      | Construction  |
| 11.9      | Entire Agreement  |
| 11.10     | Compliance with Laws  |
| 11.11     | Severability  |

**8.4.2** Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

**Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards,

photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [www.sfgov.org](http://www.sfgov.org) under "Government."

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

### **10.4 Nondisclosure of Private, Proprietary or Confidential Information.**

**10.4.1** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

**10.4.2** In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall

exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

## **10.5 Nondiscrimination Requirements**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

## **10.6 Small Business Enterprise Program.**

**10.6.1 General.** The SFMTA is committed to a Small Business Enterprise Program (SBE Program) for the participation of SBEs in contracting opportunities. In addition, the Contractor must comply with all applicable federal regulations regarding Small Business Enterprise (SBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement. More information on federal SBE requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

**10.6.2 Compliance with SBE Program.** Contractor shall comply with the SBE provisions contained in Appendix F attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Contractor to comply with any of these requirements shall be deemed a material breach of this Agreement.

**10.6.3 Non-Discrimination in Hiring.** Pursuant to City and SFMTA policy, Contractor is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure non-discrimination in Contractor's employment practices.

**10.7 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code



Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

**10.9 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or Subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701)

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of

Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**10.12 Reserved. (Slavery Era Disclosure)**

**10.13 Reserved. (Working with Minors)**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions**

**10.14.1** Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

**10.14.2** The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Reserved. (Public Access to Nonprofit Records and Meetings)**

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)**

**10.18 Reserved. (Preservative Treated Wood Products)**

## Article 11 General Provisions

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Deanna Desedas  
Marketing and Communications Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
[Deanna.desedas@sfmta.com](mailto:Deanna.desedas@sfmta.com)

OR

Amber Vasché  
Sustainable Streets Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
[Amber.vasche@sfmta.com](mailto:Amber.vasche@sfmta.com)

To Contractor: Lewis Michaelson, President  
Katz & Associates, Inc.  
5440 Morehouse Drive, Suite 1000  
San Diego, CA 92121  
[LMichaelson@katzandassociates.com](mailto:LMichaelson@katzandassociates.com)

Lisbet Sunshine, President  
Barbary Coast Consulting  
25 Taylor Street  
San Francisco, CA 94102  
[sunshine@barcoast.com](mailto:sunshine@barcoast.com)

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

**11.2 Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

**11.3 Reserved. (Payment Card Industry (PCI) Requirements)**

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue

for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.9 Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated September 14, 2016. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

## **Article 12 MacBride Principles And Signature**

**12.1 MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

### **Article 13 Large Vehicle Driver Safety Training Requirements**

**13.1** Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

**13.2** By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

|  |  |
|--|--|
| <p><b>CITY</b></p> <p><b>San Francisco<br/>Municipal Transportation Agency</b></p> <hr/> <p>Edward D. Reiskin<br/>Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____<br/>Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera<br/>City Attorney</p> <p>By: _____<br/>Isidro A. Jiménez<br/>Deputy City Attorney</p> | <p><b>CONTRACTOR</b></p> <p><b>Katz and Associates, Inc. and Barbary Coast Consulting, a joint venture</b></p> <hr/> <p>Lewis Michaelson<br/>President<br/>Katz and Associates<br/>5440 Morehouse Drive, Suite 1000<br/>San Diego, CA 92121</p> <p>City vendor number: 52651</p> <hr/> <p>Lisbet Sunshine<br/>President<br/>Barbary Coast Consulting<br/>25 Taylor Street<br/>San Francisco, CA 94102</p> <p>City vendor number: 82639</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> |
|--|--|

**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- C: Contractor Checklist for Document Submittals
- D: U.S. DOT Federal Requirements for Personal Services Contracts
- E: Small Business Enterprise (SBE) Information (Professional Services Insert)

## **Appendix A Scope of Services**

### **I. Policy Context**

Contractor shall use the SFMTA's Public Outreach and Engagement Team Strategy (POETS) as guidance in preparing strategies, engagements and Deliverables that are consistent with the SFMTA's standards below. All Task Orders are in place to help ensure the Project Managers meet the needs of community stakeholders while supporting the SFMTA's key policies, including but not limited to:

- a. SFMTA FY 2013-18 Strategic Plan:  
<https://www.sfmta.com/sites/default/files/pdfs/FY%202013%20-%20FY%202018%20SFMTA%20Strategic%20Plan.pdf>
- b. Transit First Policy (SF Charter, Article VIIA, SEC. 8A.115):  
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- c. Public Outreach & Engagement Team Strategy (POETS) see Appendix H
- d. SFMTA Brand Standards see Appendix I
- e. Complete Streets Policy (SF Public Works Code, Article II, SEC. 2.4.13):
- f. [http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- g. Vision Zero Goal <http://visionzerosf.org/>
- h. Better Streets Plan: <http://www.sfbetterstreets.org/>
- i. Bicycle Strategy [https://www.sfmta.com/sites/default/files/BicycleStrategyFinal\\_0.pdf](https://www.sfmta.com/sites/default/files/BicycleStrategyFinal_0.pdf)
- j. Pedestrian Strategy <http://archives.sfmta.com/cms/rpedmast/documents/1-29-13PedestrianStrategy.pdf>
- k. Walk First Program <http://walkfirst.sfplanning.org/>

### **II. Scope of Services**

#### **A. General Description of Work**

Contractor will generally support SFMTA project teams with planning, crafting and delivering best practices, and culturally competent outreach and engagement with stakeholder communities and the public at-large. Depending on the needs of the SFMTA and project team, a Task Order may include a request for comprehensive services for a project – from strategy/planning to execution and evaluation – or be limited to specific services or phases of the project.



## B. Specific Tasks

Specific work may include, but is not limited to, the following:

- 1) Planning for Public Outreach and Engagement
  - a) Create effective public participation plans that account for project requirements, funding needs, and other related SFMTA projects. Contractor will work with Project Managers to develop all necessary planning as outlined by POETS for the assigned project. Plans must be consistent with the POETS and utilize industry best practices in public participation, such as those developed by the International Association for Public Participation (IAP2).
  - b) Develop communications assessments that consider, but are not limited to, the following elements:
    - i) Project objectives, goals, and requirements
    - ii) Key stakeholders and project impacts by stakeholder
    - iii) Communications and outreach priorities
    - iv) Effectiveness metrics and methods of evaluation
    - v) Timelines for outreach in coordination with project planning, environmental clearance, design, construction, and evaluation stages, as well as public hearings, SFMTA Board meetings, scoping hearings, or other required Federal, State or local approvals.
  - c) Develop outreach and communication plans that support project goals and objectives for public participation plans.
    - i) Create a comprehensive communications and outreach strategy that engages diverse stakeholders (including people left out of primary stakeholder groups, such as merchant and neighborhood associations), other affected parties and the public-at-large.
    - ii) Outline communications and outreach tactics through key project phases.
    - iii) Identify opportunities for early outreach and engagement.
    - iv) Develop a toolkit of customized approaches to engage stakeholders on the project.
    - v) Compile a customized stakeholder contact list.
    - vi) Outline key messages.
    - vii) Identify coaching and training needs for Project Manager and staff, including media training, active listening, facilitation and mediation, negotiations, and handling difficult people and situations.

## 2) Implementation of Public Outreach and Engagement

- a) Assist with the implementation of outreach meetings
  - i) Schedule and reserve venues and provide logistical support for outreach meetings, inter- and intra-agency meetings, briefings, outreach at standing community events, tours and site visits, including transportation access, presentation set-up, sign-in, materials production, and other duties as assigned.
  - ii) Ensure broad awareness among relevant audiences of scheduling and content for stakeholder and outreach meetings.
  - iii) Develop presentations (e.g., PowerPoint) and presentation boards for meetings.
  - iv) Provide meeting facilitation.
  - v) Record meeting minutes, transcribe audio visual recordings, and draft meeting debriefs.
  - vi) Track meeting attendance.
  
- b) Collect and manage stakeholder engagement and feedback
  - i) Conduct and facilitate formal and informal focus groups.
  - ii) Design and administer surveys using different formats, including online, phone, intercept, and in-person interviews.
  - iii) Hold design charrettes.
  - iv) Solicit on-site, in-person feedback.
  - v) Conduct balloting or other voting mechanisms.
  - vi) Set up and monitor hotlines, including working with 311 staff to triage project-related calls; create new hotlines, as appropriate.
  - vii) Aggregate feedback to allow for detailed reporting and trend analysis.
  - viii) Prepare detailed outreach history summaries in preparation for legislative action or completion of project community phase, including:
    - (1) Reports documenting all public engagement activities
    - (2) Photographs from engagement events
    - (3) Compilation of main engagement themes (as described above)
    - (4) Counts and analysis of the number of individuals and stakeholder groups participating
  - ix) Identify and procure specific collection and measurement tools, as needed.
  
- c) Maintain stakeholder contacts and correspondence
  - i) Monitor, track and provide follow-up responses to constituent correspondence.
  - ii) Manage stakeholder concerns about scheduling meetings, logistics, and notification protocol.
  - iii) Update and maintain project stakeholder contact database, including constituents who are on- and offline.

- iv) Develop expanded stakeholder mailing lists for mailings and email blasts to reach a broad public audience.
- 3) Design and Development of Communications Materials
- a) Collateral Materials
    - i) Following the SFMTA’s brand standards, write and design culturally relevant project collateral materials, such as fact sheets, mailers, reports and presentation decks, and templates using maps, infographics, diagrams, renderings, illustrations and photographs.
    - ii) Translate materials for non-English language speakers on request.
    - iii) Ensure collateral formats are compliant with ADA accessibility standards.
  - b) Digital Assets
    - i) Assist in development and implementation of digital communications to support web pages, emails, blogs and social media.
    - ii) Draft project information for websites and for social media.
    - iii) Ensure digital assets are compliant with ADA accessibility standards.
    - iv) Provide social media monitoring services.
  - c) Video Production
    - i) Write, produce and edit videos that increase public understanding of project.
    - ii) Develop public dissemination plan for videos.
    - iii) Translate videos for non-English language speakers on request.
  - d) Miscellaneous Items
    - i) Develop customized give-away materials (i.e., “swag”) that support public interest and engagement.
    - ii) Procure miscellaneous materials and supplies for meetings and presentations.

**Appendix B  
Calculation of Charges**

Per Section 3.3.2, in addition to the rates shown below, Contractor may charge City a 5% markup on Subcontractor labor. Contractor shall itemize the markup in every invoice

| <b>Position</b>              | <b>Unburdened Hourly Rate</b>   | <b>Audited Overhead Rate</b> | <b>Fixed Contractor Fee (Cap)</b> | <b>Not-to-Exceed Fully Burdened Hourly Rate</b> |
|------------------------------|---|------------------------------|-----------------------------------|---|
| <b>KATZ &amp; ASSOCIATES</b> |   |                              |                                   |   |
| Principal in Charge          | \$71.17   | 181%                         | 10%                               | \$220.00  |
| Managing Partner             | \$48.07   | 181%                         | 10%                               | \$148.58  |
| Senior Comm. Manager         | \$46.63   | 181%                         | 10%                               | \$144.13  |
| Senior Comm. Manager         | \$39.90   | 181%                         | 10%                               | \$123.33  |
| Communications Manager       | \$36.05   | 181%                         | 10%                               | \$111.43  |
| Community Eng. Spec.         | \$33.65   | 181%                         | 10%                               | \$104.01  |
| Community Eng. Spec.         | \$30.28   | 181%                         | 10%                               | \$97.15   |
| Project Assistant            | \$26.44   | 181%                         | 10%                               | \$81.72   |
| Graphic Designer             | \$28.84   | 181%                         | 10%                               | \$89.14   |
| <b>Staff Accountant</b>      | <b>\$23.22</b>  | 181%                         | 10%                               | <b>\$71.79</b>                                  |
| <b>Barbary Coast</b>         |   |                              |                                   |   |
| Principal in Charge          | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$220.00  |
| Vice President               |   |                              |                                   | \$185.00  |
| Director                     |   |                              |                                   | \$170.00  |
| Account Manager              |   |                              |                                   | \$150.00  |
| Senior Project Manager       |   |                              |                                   | \$150.00  |
| Senior Project Manager       |   |                              |                                   | \$150.00  |
| Project Manager              |   |                              |                                   | \$125.00  |
| Project Assistant            |   |                              |                                   | \$60.00   |

| Position   | Unburdened Hourly Rate  | Audited Overhead Rate | Fixed Contractor Fee (Cap) | Not-to-Exceed Fully Burdened Hourly Rate |
|--|---|-----------------------|----------------------------|--|
| <b>51 West Media</b>   |   |                       |                            |  |
| Executive Producer   | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                       |                            | \$175.50                                 |
| Senior Producer  |   |                       |                            | \$150.43                                 |
| Senior Producer  |   |                       |                            | \$150.43                                 |
| Producer   |   |                       |                            | \$100.28                                 |
| Producer   |   |                       |                            | \$100.28                                 |
| Production Assistant   |   |                       |                            | \$60.18                                  |
| Editor   |   |                       |                            | \$81.48                                  |
| <b>Caribou Public Relations, Inc.</b>  |   |                       |                            |  |
| Outreach Manager   | \$93.57   | 70%                   | 10%                        | \$174.98                                 |
| Outreach Manager   | \$93.57   | 70%                   | 10%                        | \$174.98                                 |
| Street Team Members  | \$26.69   | 70%                   | 10%                        | \$49.91                                  |
| <b>JBR Partners Inc.</b>   |   |                       |                            |  |
| Programs Director  | \$84.75   | 136%                  | 10%                        | 220.00*                                  |
| Operations Director  | \$49.00   | 136%                  | 10%                        | \$127.20                                 |
| Field Supervisor   | \$34.62   | 136%                  | 10%                        | \$89.87                                  |
| Ambassadors  | \$19.26   | 136%                  | 10%                        | \$50.00                                  |
| <b>lowercase production</b>  |   |                       |                            |  |
| Principal  | \$75.00   | 79%                   | 10%                        | \$147.68                                 |
| Project Manager  | \$60.00   | 79%                   | 10%                        | \$118.14                                 |
| Designer   | \$55.00   | 79%                   | 10%                        | \$108.30                                 |
| Designer   | \$55.00   | 79%                   | 10%                        | \$108.30                                 |
| Programmer   | \$35.00   | 79%                   | 10%                        | \$68.92                                  |
| <b>Fairbank, Maslin, Maullin, Metz &amp; Associates, Inc. (FM3 Research)</b> |   |                       |                            |  |
| COO  | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                       |                            | \$200.00                                 |
| Associate  |   |                       |                            | \$160.00                                 |
| Research Manager   |   |                       |                            | \$170.00                                 |
| Director   |   |                       |                            | \$180.00                                 |
| Director   |   |                       |                            | \$180.00                                 |
| Partner/Principal  |   |                       |                            | \$220.00                                 |

| <b>Position</b>                       | <b>Unburdened Hourly Rate</b>   | <b>Audited Overhead Rate</b> | <b>Fixed Contractor Fee (Cap)</b> | <b>Not-to-Exceed Fully Burdened Hourly Rate</b> |
|---------------------------------------|---|------------------------------|-----------------------------------|---|
| <b>Greenway Consulting</b>            |   |                              |                                   |   |
| Facilitator                           | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$125.00  |
| <b>RDJ Enterprises LLC</b>            |   |                              |                                   |   |
| Outreach Specialist                   | \$38.46   | 134%                         | 10%                               | \$99.00   |
| Outreach Coordinator                  | \$41.83   | 134%                         | 10%                               | \$107.67  |
| Outreach Manager                      | \$84.14   | 134%                         | 10%                               | \$216.58  |
| <b>The Participation Company LLC</b>  |   |                              |                                   |   |
| Senior Strategist/Technical Analyst   | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$220.00  |
| Senior Facilitator/Dispute Resolution |   |                              |                                   | \$200.00  |
| Communication Specialist              |   |                              |                                   | \$125.00  |
| <b>InterEthnica Inc.</b>              |   |                              |                                   |   |
| Principal/Cultural Contractor         | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                              |                                   | \$150.00  |
| Account Manager                       |   |                              |                                   | \$125.00  |
| Project Manager                       |   |                              |                                   | \$125.00  |
| Graphic Designer                      |   |                              |                                   | \$125.00  |
| Illustrator                           |   |                              |                                   | \$101.75  |
| Typesetter                            |   |                              |                                   | \$101.00  |
| Outreach Staff                        |   |                              |                                   | \$75.01   |
| Outreach Lead                         |   |                              |                                   | \$95.00   |
| Editor                                |   |                              |                                   | \$101.75  |
| Senior Interpreter                    |   |                              |                                   | \$184.99  |
| Interpreter                           |   |                              |                                   | \$172.98  |
| Researcher                            |   |                              |                                   | \$150.00  |
| Assistant Researcher                  |   |                              |                                   | \$95.00   |
| Intern                                |   |                              |                                   | \$50.88   |
| Meeting Assistants                    |   |                              |                                   | \$50.88   |
| Photographer                          | \$183.15  |                              |                                   |   |

| Position                           | Unburdened Hourly Rate  | Audited Overhead Rate | Fixed Contractor Fee (Cap) | Not-to-Exceed Fully Burdened Hourly Rate |
|------------------------------------|---|-----------------------|----------------------------|--|
| <b>InterEthnica Inc. continued</b> |   |                       |                            |  |
| Sound Technician                   | Firm does not have audited hourly rates; the Parties have negotiated a flat fully burdened hourly rate. |                       |                            | \$152.62                                 |
| Voice over Talent                  |   |                       |                            | \$125.00                                 |
| Administration                     |   |                       |                            | \$76.29                                  |

**InterEthnica Interpretation Cancellation Clause**

In the event an assignment is cancelled less than 24 hours prior to a meeting or event, the client agrees to pay the full cost of the interpretation.

**InterEthnica Audio Translation Equipment**

- Headset \$18 per head set
- Translation transmitter \$125 per day
- Delivery, set-up and equipment test \$125 per event.
- On site audio technician available will be billed at \$125 per hour.

Translation minimum charge of \$125 per language.

This applies to documents that contain a word count of 200 or less.

\*The exception to this rule is advertising and slogan translation, which is charged at an hourly rate of \$125.

Translation rates are \$0.27 to \$0.40 per word depending on the language and the complexity of the source text.

- Spanish - \$0.27 per word
- Hmong - \$0.32 per word
- Arabic - \$0.30 per word
- Russian - \$0.32 per word
- Chinese - Mandarin and Cantonese - \$0.30 per word
- Vietnamese - \$0.32 per word
- Tagalog - \$0.35 per word (Tagalog/ Filipino recently was raised due to the high demand)
- Japanese - \$0.32 per word
- Korean - \$0.32 per word
- Punjabi - \$0.32 per word

These rates include translation, proofreading, and one round of client requested revisions. Our translators are all native speakers of the target language and live locally.

**Appendix C**  
**Contractor Checklist for Document Submittals**

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)**

Task Order Number: \_\_\_\_\_

Task Order Title: \_\_\_\_\_

This checklist must be filled in by the contractor and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

1. Document is edited for grammatical and typographical errors, clarity, and format.
2. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
3. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
4. All document sections, tables, figures, appendices, etc. are submitted.
5. Footnotes are on same page as the reference (no endnotes).
6. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
7. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
8. Data in tables and figures are cross-checked with text.
9. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
10. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
11. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
12. All document background reports are finalized and included with the submittal packet.
13. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Contractor at the Task Order level:
  - a. Date / Times;



- b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
- c. Name and contact information of contractor performing the count effort;
- d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
  - i. For Machine Counts: Street Name\_Direction of Approach\_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)
  - ii. For Turning Movement Counts by Hand: Street Name\_Cross Street\_Time of Day (i.e., LAGUNA CLAY PM);
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
- f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
- g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

**Notes:**

Firm Name: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix D

### FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

#### I. DEFINITIONS

- A. **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. **Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.
- C. **Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.
- D. **Federal Transit Administration (FTA)** is an operating administration of the U.S. DOT.
- E. **FTA Directive** includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.
- F. **Grant Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- G. **Government** means the United States of America and any executive department or agency thereof.
- H. **Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.
- I. **Recipient** means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.
- J. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- K. **Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.
- L. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

M. **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

## **II. 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 the City 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.

## **III. ACCESS TO RECORDS**

- A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

## **IV. DEBARMENT AND SUSPENSION**

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

## **V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

- A. The City 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 the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **VI. 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, 41 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. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR 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 CFR 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.

## **VII. DBE/SBE ASSURANCES**

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or subcontractor 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 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor 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 SFMTA deems appropriate.

**VIII. PATENT RIGHTS** (*applicable to contracts for experimental, research, or development projects financed by FTA*)

- A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.
- B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**IX. RIGHTS IN DATA AND COPYRIGHTS** (*Applicable to contracts for planning, research, or development financed by FTA*)

- A. **Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
  - 1. **Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  - 2. **Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

- a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
- b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.

**3.FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

**4.Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

**5.Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

**6.Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

**7.Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**C. Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

D. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

X. **CONTRACT WORK HOURS AND SAFETY STANDARDS** (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

A. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. **Withholding for unpaid wages and liquidated damages** - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

D. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

XI. **ENERGY CONSERVATION REQUIREMENTS**

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.

**XII. CLEAN WATER REQUIREMENTS** (*applicable to all contracts in excess of \$100,000*)

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

**XIII. CLEAN AIR** (*applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any yea.*)

- A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**XIV. PRIVACY**

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, 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 Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. 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.

**XV. DRUG AND ALCOHOL TESTING**

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

**XVI. TERMINATION FOR CONVENIENCE OF CITY** (*required for all contracts in excess of \$10,000*)



See Agreement Terms and Conditions.

**XVII. TERMINATION FOR DEFAULT** *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

**XVIII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

**XIX.**

- 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 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, 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.

**XX. FLY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**XXI. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All

contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

**XXII. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS** (*applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator*)

A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.
2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit

operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

- B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

**XXIII. NATIONAL ITS ARCHITECTURE POLICY** (*Applicable to contracts for ITS projects*)

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

**XXIV. TEXTING WHILE DRIVING; DISTRACTED DRIVING**

Consistent with Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

**XXV. SEAT BELT USE**

In compliance with Executive Order 13043 "Increasing Seat Belt Use in the United States", April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

## **Appendix E**

### **SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

#### **SBE REQUIREMENTS**

##### **Architects, Engineers, Planners, and Environmental Scientists and Other Professional Services**

### **I. POLICY**

The San Francisco Municipal Transportation Agency (SFMTA), recipient of federal financial assistance from the Federal Transit Administration (FTA), is committed to and has adopted, a Small Business Enterprise (SBE) Program to implement the Disadvantaged Business Enterprise regulations in 49 C.F.R. Part 26 (the "Regulations"), issued by the Department of Transportation (DOT).

It is the policy of the SFMTA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to SFMTA's construction, procurement and professional services activities. To this end, SFMTA has developed procedures to remove barriers to SBE participation in the bidding and award process and to assist SBEs to develop and compete successfully outside of the SBE program. In connection with the performance of this contract, the Contractor will cooperate with SFMTA in meeting these commitments and objectives.

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or Subcontractor 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 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor 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 SFMTA deems appropriate.

#### **A. Applicability**

Pursuant to 49 C.F.R. Sections 26.3 and 26.21, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement an SBE Program in accordance with the Regulations. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by DOT federal financial assistance.

#### **B. Objectives**

The objectives of this program are to:

1. Remove barriers to SBE participation in the bidding, award and administration of SFMTA contracts;
2. Assist SBEs to develop and compete successfully outside of the Program;
3. Ensure that the Program is narrowly tailored in accordance with 49 C.F.R. Part 26;
4. Ensure that only SBEs meeting the eligibility requirements are allowed to participate as SBEs;
5. Identify business enterprises that are qualified as SBEs and are qualified to provide SFMTA with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. Develop communications programs and procedures which will acquaint prospective SBEs with SFMTA's contract procedures, activities and requirements and allow SBEs to provide SFMTA with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
7. Administer the Program in close coordination with the various divisions within SFMTA so as to facilitate the successful implementation of this Program.

### **C. Administration of Program**

The Director of Transportation is responsible for adherence to this policy. The DBE Liaison Officer (DBELO) shall be responsible for the development, implementation and monitoring of this program. It is the expectation of the Municipal Transportation Board of Directors and the Director of Transportation that all SFMTA personnel shall adhere to the provisions and the spirit of this program.

### **D. Prohibited Discrimination**

SFMTA shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the basis of (the fact or perception of a person's) race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

**E.** SFMTA shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals in the groups or categories or having the characteristics listed above.

**F.** SFMTA has signed the federal assurances regarding non-discrimination required under 49 C.F.R. Section 26.13. See III.D (Contract Assurances) for requirements of Contractor and Subcontractors.

## **II. DEFINITIONS**

Any terms used in SFMTA's SBE Program that are defined in 49 C.F.R. Section 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. An SBE is defined as follows:

**Small Business Enterprise (SBE):** An SBE is a for-profit, small business concern with a three-year average gross revenue not exceeding current SBA size standards appropriate for its type of work and is either verified eligible by the SFMTA or the State of California's Small Business Program with the Department of General Services, the California Unified Certification Program with a U.S. Department of Transportation recipient, or the City and County of San Francisco's LBE program with the Human Rights Commission.

## **III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS**

### **A. SBE Participation Goal**

A goal of 30 percent SBE participation has been established for this contract. This SBE goal will apply to the following types of contracts or scope of work in the contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

### **B. Determining the Amount of SBE Participation**

The SFMTA strongly encourages the prime contractor to make every good faith effort to include SBEs to perform meaningful work in all aspects of the projects. To accomplish this goal, the following guidance is provided:

#### **1. SBE Participation**

SBE participation includes contracts (other than employee contracts) with SBEs for any goods or services specifically required for the completion of the work under the

Agreement. An SBE may participate as a prime contractor/contractor, subcontractor/contractor, joint venture partner with a prime or contractor, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement.

**2. Function**

An SBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work. However, an SBE may contract out a portion of the work if it is considered to be a normal industry practice. If an SBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE shall be presumed not to be performing a commercially useful function.

**3. Determining the amount of SBE Participation**

SBE participation includes that portion of the contract work actually performed by a certified SBE with its own forces. An SBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by the contract.

An SBE's participation can only be counted if it is performing a commercially useful function.. An SBE is performing a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE is not responsible for at least 30 percent of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function.

The Contractor shall determine the amount of SBE participation for each SBE performing work on the contract in terms of both the total value of the work in dollars and the percentage of the total contract bid price. The Contractor shall also determine the total amount of SBE participation for the entire contract. The Contractor shall count SBE participation according to the following guidelines:

**a. SBE Prime Contractor**

Count the entire dollar amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE participation by the SBE Prime Contractor.

**b. SBE Subcontractor**



Count the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Contractor) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE subcontractor to another firm as SBE participation by said SBE subcontractor. If the work has been subcontracted to another SBE, it will be counted as SBE participation by that other SBE.

**c. SBE Joint Venture Partner**

Count the portion of the work that is performed solely by the SBE's forces or if the work is not clearly delineated between the SBE and the joint venture partner, count the portion of the work equal to the SBE's percentage of ownership interest in the joint venture.

**d. SBE Regular Dealer**

Count 60 percent of the costs of materials and supplies obtained from an SBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business (except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business). This applies whether an SBE is a prime contractor or subcontractor.

**e. Other SBEs**

Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from an SBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

**C. Submission of Certification for SBEs**

All firms wishing to receive credit for participation under the SFMTA's SBE Program must be certified as bona fide SBEs with the SFMTA. This requires either submission of: (1) the completed certification applications for either SBEs, DBEs, or LBEs, or (2) submission of the SFMTA's small business verification application. For information regarding where to obtain applications for these certifications, please contact the SFMTA Contract Compliance Office at:

San Francisco Municipal Transportation Agency  
Contract Compliance Office  
One South Van Ness Avenue, 6th floor  
San Francisco, California 94103

**D. Contract Assurances**

The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The Contractor and its subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. 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 the recipient deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

**E. Use of SBE Firms**

The Contractor shall use the specific SBEs listed to perform the work and supply the materials for which each is listed unless the Contractor obtains CCO's prior written consent. Unless prior written consent by CCO is provided, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE.

**F. Substitution of Subcontractors and Suppliers**

The Contractor shall not terminate an SBE subcontractor or supplier for convenience and then perform the work with its own forces. Before requesting the termination and/or substitution of an SBE subcontractor, the Contractor must give notice in writing to the SBE subcontractor, with a copy to CCO, of its intent to request to terminate and/or substitute, and the reason for the request. The Contractor must give the SBE five days to respond to the notice and advise CCO and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Contractor's request should not be approved. CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the SFMTA Board of Directors.

When an SBE subcontractor is terminated as provided in this section, or fails to complete its work on the contract for any reason, the Contractor shall make good faith efforts to find another SBE subcontractor to substitute for the original SBE. These good faith efforts shall be directed at finding another SBE to perform at least the same amount of work under the contract as the SBE that was terminated, to the extent needed to meet the established SBE contract goal.

**G. Addition of Subcontractors and Suppliers**

The Contractor shall notify CCO prior to any addition of an SBE or non-SBE subcontractor or supplier to the project. Submit SBE SFMTA Form No. 4 for each new SBE subcontractor or supplier. Any new SBE subcontractor or supplier approved by CCO also must submit SFMTA SBE Form No. 5.

## **H. Prompt Payment to Subcontractors**

In accordance with SFMTA's SBE Program, no later than three days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors. Unless the prime contractor notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime contractor and the subcontractor. Within five working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractors.

Contractor may withhold retention from subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within 30 days of City's payment of retention to Contractor for satisfactory completion of all work required of a subcontractor, Contractor shall release any retention withheld to the subcontractor. Satisfactory completion shall mean when all the tasks called for in the subcontract with subcontractor have been accomplished and documented as required by City.

If the Contractor does not pay its subcontractor as required under the above paragraph, it shall pay interest to the subcontractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

## **IV. MONITORING AND COMPLIANCE**

### **A. SBE Records; Reporting Requirements**

The Contractor shall maintain records of all SBE participation in the performance of the contract including subcontracts entered into with certified SBEs and all materials purchased from certified SBEs.

The Contractor shall submit SBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Contractor shall submit a final summary SBE report to the CCO.

### **B. Noncompliance; Administrative Remedies**

SFMTA will implement appropriate mechanisms to ensure that its prime contractors and subcontractors comply with SBE Program regulatory requirements. SFMTA will apply legal and contractual remedies available under federal, state and local law.

SFMTA will also include a monitoring and enforcement mechanism to verify that the work committed to SBEs at contract award is actually performed by the SBEs. This mechanism will provide for a running tally of actual SBE attainments and include a provision ensuring that SBE participation is credited toward overall or contract goals only when payments are actually made to SBE firms.