

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Requesting authorization to execute Contract No. CS-163-1, Insurance Brokerage Services for an Owner's Controlled Insurance Program (OCIP) to provide Excess Liability Insurance for the Central Subway Project, with Aon Risk Insurance Services West, Inc. and to bind each layer of excess insurance coverage up to a maximum limit of \$150,000,000 in excess of the \$200,000,000 limits provided by the contractors for four Central Subway construction contracts for a total amount not to exceed \$9,808,750 and for a term of eight years.

SUMMARY:

- The SFMTA Board of Directors adopted Resolution No. 10-130 on October 19, 2010 authorizing advertisement of a Request of Proposals for Contract No. CS-163, Brokerage Services for an Owner Controlled Insurance Program for the Central Subway Project.
- SFMTA revised its RFP after initial issuance due to substantial input from the community in order to maximize SBE participation. The revised RFP divided the required services into three separate packages (Tasks) and allowed for three separate contracts.
- SFMTA received a single proposal from AON Risk Insurance Services West, Inc. for Task 1 under this RFP on January 18, 2011. An independent selection committee evaluated this proposal and determined the proposer to be qualified to perform these services.
- Aon Risk Insurance Services West, Inc., will provide services to place a construction excess liability insurance component for the tunnel and 3 stations contracts.

ENCLOSURES:

1. SFMTA Board of Directors Resolution
2. Project Budget & Financial Plan
3. Contract

APPROVALS:

DATE

DIRECTOR _____ 1/30/12

SECRETARY _____ 1/30/12

ASSIGNED SFMTAB CALENDAR DATE: February 7, 2012

PAGE 2.

PURPOSE

Requesting authorization to execute Contract No. CS-163-1, Insurance Brokerage Services for an Owner's Controlled Insurance Program (OCIP) to provide Excess Liability Insurance for the Central Subway Project, with Aon Risk Insurance Services West, Inc. and to bind each layer of excess insurance coverage for the Central Subway Project for a total amount not to exceed \$9,808,750 inclusive of all premiums, fees, costs and taxes, and for a term of eight years.

GOAL

Excess liability insurance coverage for the Central Subway Project will provide liability protection that is consistent with the SFMTA Strategic Plan in the following goals and objectives:

Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization
Objective 4.2 Ensure efficient and effective use of resources

DESCRIPTION

Background:

The SFMTA's Third Street Light Rail Transit (LRT) Project is the most significant capital investment in generations for the seventh largest transit system in the nation. Phase 1 of the 6.9-mile two-phase project began revenue service in April 2007, restoring light rail service to the heavily transit-dependent Third Street corridor in eastern San Francisco for the first time in 50 years.

The Central Subway Project, Phase 2 of the Third Street Light Rail Transit Project, will provide rail service to the Financial District and Chinatown, the most densely developed areas of San Francisco. The new light rail line will serve regional destinations, such as Union Square, Moscone Convention Center, Yerba Buena, and AT&T Park, as well as connect directly to BART and Caltrain, the Bay Area's two largest regional commuter rail services.

The Central Subway Project (Project) will issue seven construction contracts with a total estimated construction cost of approximately \$725 million. The construction started in 2010 and will continue for 8 years. Start of revenue operations is scheduled for 2018.

Current Status:

The Central Subway design consists of a short portion of in-street surface light rail in the southern portion of the system before transitioning into subway operation for most of the alignment. Twin bore tunnels are proposed for the subway, with three subway stations serving the Moscone/Yerba Buena, Union Square/Market Street, and Chinatown areas.

PAGE 3.

The Union Square/Market Street Station will interconnect with the existing BART/Muni Powell Street Station. A deep tunneling approach using tunnel boring machines (TBMs) is proposed to reduce surface disruption during construction, to create a more direct alignment, and to shorten the construction period. The Central Subway tunnels will pass under the existing BART/Muni Market Street subway tunnels with the rail over 100 feet below the ground surface. Most of the alignment will be located under existing street right-of-way with limited required underground easements. The stations will have center-platforms with passenger end-loading and are designed to accommodate high-floor two-car trains. Whenever feasible, off-street properties have been identified for the primary station access with transit oriented development opportunities at the Moscone/Yerba Buena and Chinatown Stations.

Construction methods consist of TBM construction of the running tunnels, which will pass through differing geological formations, including bay mud, alluvium, Colma formation, and Franciscan bedrock. Subway station construction methods will vary. The Moscone/Yerba Buena Station will be constructed using traditional top-down cut-and-cover construction. The Union Square/Market Street Station is located in a very constricted area and will be constructed using a top-down cut-and-cover method. Chinatown Station, also in a very constricted area, will be constructed using mined sequential excavation.

The preliminary engineering work for the Project has been completed. On January 7, 2010, the FTA issued its approval for the Project to enter into Final Design. Three design consultant teams in conjunction with SFMTA staff have and are currently preparing design packages that the SFMTA will issue for competitive contract bids to construct the Project.

Currently, one construction contract for relocating utilities for the Moscone Station and the portal areas is completed. Another construction contract to relocate utilities in the Union Square/Market Street Station location is currently under construction. In addition, the largest contract for the Project, the tunneling contract, has been awarded and is to start construction shortly. Four additional construction contracts are in the final design phase. The Project construction is expected to be completed in 2018.

Purpose and Scope of Contract:

The complexity of the Central Subway, including tunneling and cut-and-cover construction, in proximity to sensitive urban structures and facilities, poses significant construction challenges and potential liability to the City. Five major construction contracts for tunnel, below ground stations and systems represent approximately \$800 million of work along 1.7 mile alignment from Fourth and King Streets to Columbus Street. The proximity of the Project work to structures in congested urban areas, constructed under multiple construction contracts involving dozens of contractors at significant costs presents the SFMTA with complex and significant liability issues. To address those concerns, the SFMTA Board of Directors adopted Resolution No. 10-130 on October 19, 2010 to advertise, receive proposals, select highest ranked proposer, and negotiate an agreement for an Owner Controlled Insurance Program (OCIP) for the major construction activities on the Third Street Light Rail Program, Central Subway Phase 2.

PAGE 4.

An OCIP would consolidate most all the insurance needs for the construction phase of the Project and would have provided coverage for hazards that may pose significant economic and schedule impacts to the Project.

The SFMTA issued an RFP for OCIP insurance broker services on October 27, 2010. The RFP was later revised through addenda to separate the OCIP work into three separate packages (Tasks). The three Tasks were: Task #1 (Contract No. CS-163-1) – OCIP General Liability Insurance Marketing and Implementation Services; Task #2 (Contract Co. CS-163-2) – OCIP Administration and Support Services; and Task #3 – (Contract No. CS-163-3) – Builders Risk. The SFMTA received one proposal from AON Risk Insurance West, Inc. (AON) on January 18, 2011 for TASK #1 services. The proposal was evaluated by a technical selection committee comprised of members from various SFMTA divisions, and City Departments. AON was selected as the qualified proposer for Task #1, which is the subject of the contract now before the SFMTA Board.

Upon review of the estimated general liability insurance costs, staff concluded that the final OCIP costs when compared to the engineer's insurance cost estimate would be prohibitively high, and that the Agency would seek to obtain traditional insurance coverage through contractors for each construction contract. As a result, the Agency rejected all OCIP broker proposals to seek the required insurance from the construction contractors. Upon award of the Tunneling contract, which was the first large construction contract for the Central Subway Program, it became apparent that the Agency's previous efforts at obtaining OCIP had impacted the liability insurance and reinsurance market to the degree that it was not possible to obtain contractor provided coverage for reasonable cost in the amounts required for the Project. Further, the amount of primary coverage required from the tunnel contractor (\$500,000,000), even if it could be obtained for the tunneling contract, would effectively wipe out the availability of primary coverage for the three station contracts. The Agency determined that it would therefore be necessary to obtain an excess liability insurance layer under Task #1 to be provided over traditional primary insurance coverage provided by the contractor.

Based on recommendations from the broker (Aon), obtaining an OCIP excess liability insurance layer placed over a traditional insurance program will reduce overall insurance costs and will preserve insurance capacity for the future station contracts. The SFMTA therefore seeks to retain the services of the highest ranked broker for Task One – OCIP Insurance, Aon Risk Insurance Service West, Inc. (Broker), to place excess liability insurance for the tunnel and three station contracts.

The Broker will market and obtain quotes, for the SFMTA to bind, for \$150 million liability coverage in excess of \$200 million base (primary) insurance coverage for the tunnel and three stations contracts. The initial \$200 million of primary liability insurance and all other insurances, including worker's compensation, automobile, professional liability insurance, environmental pollution liability insurance are provided by the construction contractor.

PAGE 5.

The final cost of the excess liability insurance policy will be determined when the broker is under contract with the SFMTA and when bindable policy premium quotes have been received and negotiated with the insurance carriers. Staff has negotiated the broker's fees to obtain the lowest possible premium cost for the excess insurance coverage and has received preliminary insurance policy quotations that do not exceed \$9,808,750 inclusive of all premiums, fees, costs and taxes. The Tunnel Contractor will reimburse SFMTA for its pro-rata share of the costs for providing this excess liability insurance.

Staff recommends that the award of the contract to Aon Risk Insurance Services West, Inc. for Task One (Contract No. CS-163-1) 1 will support SFMTA goals and objectives in the delivery of the Central Subway Project by: ensuring efficient and effective use of public resources. SFMTA successfully negotiated a contract with Aon Risk Insurance Services West, Inc. in January 2010 for a total amount not to exceed \$9,808,750 for the term of insurance, which is five years, excluding completed operations coverage obligations.

The Contract Compliance Office has determined that there are no significant opportunities for SBEs to participate on the negotiated services to place excess liability insurance as set forth in this contract.

A copy of the Broker Contract is attached as Enclosure 3.

The City Attorney's Office has reviewed this calendar item.

ALTERNATIVES CONSIDERED

The principal alternatives that Agency staff considered are an Owner Controlled Insurance Program (OCIP), a Contractor Controlled Insurance Program (CCIP) and a Traditional Insurance Programs (TIP).

FUNDING IMPACT

The funding for services under this contract, are from federal, state and local sources. All costs for these services are covered by the existing Central Subway Project budget and this does not increase the Project budget. The Central Subway Project Budget & Financial Plan is set forth in Enclosure 2.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No further action required; Civil Service Commission approval was obtained by the SFMTA on June 20, 2010 under Civil Service Approval No. 4117-10/11.

PAGE 6.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation or his designee to execute Contract No. CS-163-1, Insurance Brokerage Services for an Owner's Controlled Insurance Program to provide Excess Liability Insurance for the Central Subway Project with Aon Risk Insurance Services West, Inc. and to bind each layer of excess insurance coverage for the Central Subway Project for a total amount not to exceed \$9,808,750 and for a term of eight years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Final Environmental Impact Statement/Environment Impact Report (Final EIR/EIR) for the two-phase Third Street Light Rail Project (Project) was completed in November 1998; and,

WHEREAS, The former Public Transportation Commission approved Resolution No. 99-009 on January 19, 1999, which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the Project's Final Environmental Impact Report and Mitigation Monitoring Report; and,

WHEREAS, Design and construction of the 1.7-mile Central Subway (Central Subway Project) is Phase 2 of the Third Street Light Rail Transit Project; and,

WHEREAS, The anticipated complexity of the Central Subway, including tunneling and cut-and-cover construction, in proximity to sensitive urban structures and facilities in congested urban areas, poses significant construction challenges to the City; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No. 10-130 on October 19, 2010 authorizing advertisement of a Request for Proposals for Contract No. CS-163, Brokerage Services for an Owner Controlled Insurance Program (OCIP) for the Central Subway Project with; and,

WHEREAS, The SFMTA desires to obtain \$150 million excess liability coverage in excess of \$200 million for the tunnel and 3 stations contracts to be acquired through a traditional construction contractor insurance procurement; and,

WHEREAS, The SFMTA desires to retain the services of the highest ranked broker for Task One – OCIP Insurance, Aon Risk Insurance Service West, Inc. (Broker), to obtain the excess liability insurance; and,

WHEREAS, The funding for services under this Contract is from federal, state and local sources; and,

WHEREAS, Civil Service Commission approval for contracts resulting from Request of Proposal Contract No. CS-163 was obtained by the SFMTA on June 20, 2010 under Civil Service Approval No. 4117-10/11; and,

WHEREAS, Contract No. CS-163-1 will assist SFMTA in meeting the Strategic Plan Objective No. 4.2 -- to ensure the efficient and effective use of resources; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation or his designee to execute Contract No. CS-163-1, Insurance Brokerage Services for an Owner's Controlled Insurance Program to provide Excess Liability Insurance for the Central Subway Project with Aon Risk Insurance Services West, Inc. and to bind each layer of excess insurance coverage for the Central Subway Project for a total amount not to exceed \$9,808,750 and for a term of eight years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of February 7, 2012.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

THIRD STREET LIGHT RAIL PROJECT
CENTRAL SUBWAY

Project Budget & Financial Plan

Cost	(\$Million)
Conceptual and Preliminary Engineering	59.41
Program Management & Construction Management	132.78
Final Design	85.94
Construction Contracts	986.68
Vehicles	26.39
Contingency	160.26
Right-of-Way	34.84
Other Professional Services	92.00
Total Central Subway Cost	\$ 1,578.30

Funding	(\$Millions)
Federal 5309 New Starts	942.20
State RTIP Grant	68.28
CMAQ	41.03
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	82.50
Proposition 1B-MTA Share	225.28
Proposition K Sales Tax Funds	123.98
High Speed Rail Funds	61.31
State Local Partnership Program	19.72
Total Central Subway Funding	\$ 1,578.30

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

**Agreement between the City and County of San Francisco
and Aon Risk Insurance Services West, Inc. for
Insurance Brokerage Services for an Owner's Controlled Insurance
Program ("OCIP") to provide Excess Liability Insurance for the
Central Subway Project**

Contract No. CS-163-1

This Broker Services Agreement ("Agreement" or "Contract"), SFMTA Contract No. CS-163-A is dated for convenience as January 23, 2012, made in the City and County of San Francisco, State of California, by and between: Aon Risk Insurance Services West, Inc. ("Broker"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").¹

RECITALS

WHEREAS, The SFMTA desires to obtain insurance in the form of a rolling excess policy to provide excess liability insurance coverage to the City and its contractors in the construction of the subway tunnels and three subway stations as part of the public work known as the Central Subway Project ("Project"), which is Part 2 of the Third Street Light Rail Program; and,

WHEREAS, The excess insurance shall provide coverage for third party liability for the City and Project contractors; and

WHEREAS, The SFMTA intends that the implementation of an excess coverage insurance program for the Project will result in increased buying power, uniform insurance, broad coverage, and reduced costs for the Project; and

WHEREAS, the SFMTA wishes to secure the services a qualified insurance broker to provide insurance services to review insurance policies proposed by construction contractors, conduct insurance market studies and surveys for an insurance program for the Project for excess liability; and,

WHEREAS, a Request for Proposals ("RFP") was issued on October 19, 2010, and the SFMTA selected Broker through a competitive process as the highest ranking responsive Proposer; and

¹ Except where a City agency other than the SFMTA acts in a regulatory capacity, the terms City and SFMTA are synonymous.

WHEREAS, Approval for this Agreement was obtained from the Civil Service Commission Notice of Action No. 4117-10/11 on June 20, 2011.

WHEREAS, Broker represents and warrants that it is qualified to perform the services required by the City, as set forth under this Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Certification of Funds. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation. The City's obligation hereunder shall not at anytime exceed the amount certified by the Controller for the purpose and period stated in such certification. 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 the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. Funding for the Contract may be certified in parts, as funds become available. Broker shall not perform Work in excess of the amount certified for the Contract. THIS SECTION 1 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term and Expiration of the Agreement.

2.1. Subject to Section 1, the term of this Agreement shall be for a period of eight (8) years commencing on the Effective Date of the Agreement, excluding Broker's obligations for completed operations claims services.

2.2. Prior to expiration of this Agreement, Broker shall commence and perform, with diligence, all actions necessary on the part of Broker to effect the termination of this Agreement and to minimize the liability of Broker and City to third parties as a result of expiration. Further, Broker shall perform all actions necessary for the uninterrupted continuance of insurance policies secured pursuant to this Agreement with the City and/or through an alternative Broker of the City's choosing. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation those listed in Section 21.2 of this Agreement. The Term may be extended upon agreement in writing by Broker and SFMTA in one-year increments. However, the expiration of this Contract does not relieve Broker of its responsibilities to provide closeout services as required under the Contract.

3. Effective Date of Agreement. This Agreement shall become effective when the SFMTA Board of Directors has authorized execution of the Contract, the San Francisco Board of Supervisors has authorized the Contract, the SFMTA's Executive

Director/CEO has executed the Contract, and the Controller has certified to the availability of funds and that SFMTA has so notified the Broker in writing.

4. Scope of Work and Representations of Broker.

Broker represents and warrants the following:

4.1 Obligation of Broker. The Broker agrees to perform or cause to be performed the services provided for in Appendix B, "Services To Be Provided by Broker" attached hereto and as described in the recitals stated above, all which are incorporated by reference as though fully set forth herein. Broker will be responsible for providing the Scope of Services in a timely, cost-effective and professional manner. Broker agrees to perform its services under this Contract as an independent contractor, and shall devote such time and commit such resources as are necessary to meet its obligations under this Agreement, whether specified or performed as a matter of course under industry standards.

4.2 Standard of Care. All employees and subcontractors of Broker who are involved in the provision of services under this Contract shall perform all services and complete all duties with a degree of skill and competence consistent with the skill and competence shown by comparable insurance brokers that have performed and provided similar services to large complex public works projects in California.

4.3 Corporate Organization and Standing. Broker is a California corporation duly organized, validly existing and in good standing under the laws of the State of California, and has the power and authority to enter into this Contract and to fulfill its duties under this Contract.

4.4 Corporate Authorization. The execution and delivery of this Contract and the fulfillment by Broker of the duties contemplated hereby have been duly authorized by all necessary actions on the part of Broker, and this Contract, as of the Effective Date, will constitute a valid and binding Contract of Broker, enforceable against Broker in accordance with its terms.

4.5 No Violation by Virtue of the Contract. Neither the execution and delivery of this Contract nor the fulfillment by Broker of the duties set forth herein will constitute a violation of, or be in conflict with, or constitute an event that, with the giving of notice or the passage of time, or both, would result in a breach of, constitute a default under, or create (or cause the acceleration of the maturity of) any debt, obligation or liability affecting this Contract under:

- (a) Any term or provision of any applicable federal or state statute, law, rule, regulation or any resolutions of any relevant governmental entity having jurisdiction over Broker;

(b) Any contract, permit, agreement or indenture to which Broker is subject; or

(c) Any judgment, decree, order, regulation or rule of any governmental entity applicable to City.

4.6 Accuracy; Completeness. No statement or representation by Broker in this Contract contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact relevant to such statement or representation necessary to make the information contained in such statement or representation not misleading.

4.7 Professional Capacity. Broker has the professional and financial resources necessary to fulfill its obligations under this Contract.

5. Compensation.

5.1. The City shall compensate Broker for providing the services to the CSP through retail and wholesale commissions received from City's payment to insurance companies either directly or through Broker as provided in "Calculation of Charges" (Appendix C).

5.2. In no event shall the City's total expenditure (inclusive of all premiums, broker's fees, brokers commissions, Surplus Lines Taxes and fees, and government fees for insurance coverage, and other charges and fees) for insurance secured and services provided by Broker under this Agreement exceed Nine Million Eight Hundred Eight Thousand Seven Hundred Fifty Dollars (\$9,808,750). Each component of the Broker's compensation and the breakdown of costs associated with this Agreement appear in Appendix C, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

5.3. No charges shall be incurred under this Agreement nor shall any payments become due to Broker until reports, services, or both, required under this Agreement are received from Broker and approved by the SFMTA as being in accordance with this Agreement. City may withhold payment to Broker in any instance in which Broker has failed or refused to satisfy any material obligation provided for under this Agreement.

5.4. Before presenting the City with potential insurance policies, Broker will disclose to the City all compensation agreements it has with any insurer to which it has marketed the City's book of insurance. Prior to each placement by Broker and prior to binding any coverages for the City's insurance programs, Broker shall disclose to the City and obtain the City's approval of any commissions and/or contingent income collected or to be collected by Broker or its affiliates with respect to such placement. The City will also be provided prior to binding any policies with an accounting of any

amounts to be paid to Broker, Broker's affiliates, and/or non-Broker intermediaries if available, in connection with coverages placed for the City's insurance programs, including any fees, if applicable, paid to Broker for services it provides to third parties. In addition, Broker will annually provide the City with a summary of all Broker revenue applicable to the City's insurance programs including all fees paid to or income generated from wholesale operations or intermediaries used in the process of obtaining the City's insurance coverage or services.

5.5. Broker is permitted to receive commissions from insurers for the individual coverages placed for the City's insurance programs. However, Broker is prohibited from including the coverages placed for the City in Broker's aggregate with an insurer used to calculate contingent income based on the total volume of coverage placed by Broker with insurer.

5.6. Insurance placements made by Broker on the City's behalf may require the payment of state surplus lines or other premium taxes and or fees in addition to the premium itself. Broker will invoice the City for the payment of these taxes and fees with the premium.

5.7. In no event shall City be liable for interest or late charges for any late payments.

5.8. The Controller is not authorized to pay invoices submitted by Broker prior to Broker's submission of SFMTA SBE Form No. 6: Progress Payment Report. If SFMTA SBE Form No. 6 is not submitted with Broker's invoice, the Controller will notify the department, the SFMTA Contract Compliance Office and Broker of the omission. If Broker's failure to provide SFMTA SBE Form No. 6 is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until SFMTA SBE Form No. 6 is provided.

5.9. Following City's payment of an invoice, Broker has five (5) days to submit SFMTA SBE Form No. 7: Subconsultant Payment Declaration verifying that all subcontractors have been paid and specifying the amount and date of payment.

6. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Broker for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not

authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format. Invoices furnished by Broker under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Broker shall be subject to audit by City. Payment shall be made by City to Broker at the address specified in Section 21 ("Notices to the Parties and City Liaison)."

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that Section. The text of Section 21.35, along with the entire San Francisco Administrative Code, is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (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.

9. Federal Contract Requirements. Broker shall comply with all applicable federal contracting laws, regulations and requirements, including but not limited those described in Appendix A to this Agreement.

10. Taxes.

10.1 Payment of any taxes and government fees, including possessory interest taxes and California sales and use taxes insurance taxes and other government fees, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Broker. Broker recognizes and understands 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 Broker to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

a. Broker, on behalf of itself and any permitted successors and assigns, recognizes and understands that Broker, and any permitted successors and

assigns, may be subject to real property tax assessments on the possessory interest;

b. Broker, 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. Broker 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.

c. Broker, 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). Broker 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.

d. Broker 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.

11. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Broker, shall in no way lessen the liability of Broker to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Broker without delay.

12. Broker's Personnel.

12.1. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Broker. Broker will comply with City’s reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City’s request, must be supervised by Broker. Broker shall commit adequate resources to complete the project within the Project Schedule (Appendix D) specified in this Agreement.

12.2 Key Personnel. Regina M. Carter, Managing Director, is Broker's Key Personnel. Ms. Carter shall be authorized to act on behalf of Broker with respect to the

obligations, responsibilities and rights of Broker under this Contract, and to accept all communications from City with respect to this Contract. Ms. Carter shall be available to consult with City at all reasonable times, and City will be entitled to act in reliance upon the recommendations, instructions and decisions of Key Personnel insofar as they relate to this Contract.

12.3 Approval of Changes. Any change in Broker's Key Personnel shall require City approval. Any request for change in the Broker's Key Personnel must be submitted to SFMTA in writing forty-five (45) days prior to assignment.

13. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Broker, or by any of its employees, even though such equipment be furnished, rented or loaned to Broker by City.

14. Independent Broker; Payment of Taxes and Other Expenses

14.1. Independent Broker. Broker or any agent or employee of Broker 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. Broker or any agent or employee of Broker 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. Broker or any agent or employee of Broker is liable for the acts and omissions of itself, its employees and its agents. Broker 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 Broker's performing services and work, or any agent or employee of Broker providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Broker or any agent or employee of Broker. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Broker'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 Broker performs work under this Agreement.

14.2. Payment of 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 Broker 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 Broker 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 Broker for City, upon notification of such fact by City, Broker shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Broker under this Agreement (again, offsetting any amounts already paid by Broker 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, Broker shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Broker is an employee for any other purpose, then Broker agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Broker was not an employee.

15. Insurance.

15.1. Without in any way limiting Broker's liability pursuant to the "Indemnification" Section of this Agreement, Broker 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 for each accident, injury, or illness; and

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

c. Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

d. Errors and Omissions insurance with limits not less than \$10,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

15.2. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

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.

15.3. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue,
3rd Floor San Francisco, CA 94103
Attention: Shahnam Farhangi
In re: Contract No. CS-163-A

Matt Hansen, Director
Risk Management Division
City and County of San Francisco
25 Van Ness Ave., Suite 410
San Francisco, California 94102

15.4. Should any of the required insurance be provided under a claims-made form, Broker shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) 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.

15.5. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

15.6. 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.

15.7. Before commencing any operations under this Agreement, Broker shall do the following: (a) 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, and (b) furnish to City complete copies of

policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.

15.8. Approval of the insurance by City shall not relieve or decrease the liability of Broker hereunder.

15.9. If a subcontractor will be used to complete any portion of this Agreement, the Broker shall ensure that the subcontractor shall provide all necessary insurance and shall name the City, its officers, agents and employees and the Broker listed as additional insureds.

16. Indemnification

16.1. General. To the fullest extent permitted by law, Broker shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Broker or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Broker, any subcontractor or subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

16.2. Limitations. No insurance policy covering the Broker's performance under this Agreement shall operate to limit the Broker's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Broker assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

16.3. Copyright infringement. Broker shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Broker's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

17. Incidental and Consequential Damages. Broker shall be responsible for incidental and consequential damages resulting in whole or in part from Broker's acts or

omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 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.

19. Reports and Program Records.

19.1. Progress Reports. Within five (5) business days of SFMTA request, Broker shall furnish to SFMTA reports in form and content satisfactory to SFMTA. The information in the report shall be current for the period ending on the first day of the previous month.

19.2. Program Records and Audit.

(a) Upon reasonable advance written request by City, Broker shall make available to City or representative, at the Broker or such other location mutually agreed upon, accurate records and other work product relating to this Contract documenting Broker's performance under the terms and conditions of this Contract.

(b) Broker shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Contract 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 Contract shall enjoy the same rights conferred upon City by this Article.

20. Default; Remedies.

20.1 If the City determines that the Broker is in breach of this Agreement, prior to declaring Broker in default of the Agreement, the City shall provide written notice to Broker of the nature and circumstances of the breach. Broker shall have five (5) calendar days to dispute said notice and provide the City with explanation or proof that it is not in breach of Contract. If Broker does not dispute that it is in breach of this Agreement or if the City rejects Broker's dispute of breach, Broker shall have 15 calendar days from the date that the City issued the notice of breach either to cure the breach or provide a plan and schedule acceptable to the City by which it will cure the breach.

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

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

- 8. Submitting False Claims; Monetary Penalties
- 10. Taxes
- 15. Insurance
- 24. Proprietary or confidential information of City
- 30. Assignment
- 37. Drug-free Workplace Policy,
- 53. Compliance with Laws
- 57. Protection of Private Information
- 58. Graffiti removal

b. Broker fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Broker.

c. Broker (1) is generally not paying its debts as they become due, (2) 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, (3) makes an assignment for the benefit of its creditors, (4) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Broker or of any substantial part of Broker’s property or (5) takes action for the purpose of any of the foregoing.

d. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Broker or with respect to any substantial part of Broker’s property, (b) 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 (c) ordering the dissolution, winding-up or liquidation of Broker.

20.3 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, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Broker any Event of Default; Broker 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 Broker under this Agreement or any other agreement between City and Broker all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Broker pursuant to the terms of this Agreement or any other agreement.

20.4 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.

21. Termination for Convenience

21.1. 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 Broker written notice of termination. The notice shall specify the date on which termination shall become effective.

21.2. Upon receipt of the notice, Broker shall commence and perform, with diligence, all actions necessary on the part of Broker to effect the termination of this Agreement on the date specified by City and to minimize the liability of Broker 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 and other work under this Agreement on the date(s) and in the manner specified by City.
- b. Not placing any further orders or subcontracts for materials, services, equipment or other items.
- c. Terminating all existing orders and subcontracts.
- d. At City's direction, assigning to City any or all of Broker's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City 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.
- e. Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- f. Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

g. Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Broker and in which City has or may acquire an interest.

21.3. Within 30 days after the specified termination date, Broker shall submit to City an invoice, which shall set forth each of the following as a separate line item:

a. The reasonable cost to Broker, without profit, for all services and other work City directed Broker to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Broker's direct costs for services or other work. Any overhead allowance shall be separately itemized. Broker may also recover the reasonable cost of preparing the invoice.

b. A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection 21.3.a, provided that Broker can establish, to the satisfaction of City, that Broker would have made a profit had all services and other work 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 Broker of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

d. A deduction for the cost of materials to be retained by Broker, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

21.4. In no event shall City be liable for costs incurred by Broker or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding Subsection 21.3. Such non-recoverable costs include, but are not limited to, anticipated profits on 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 such Subsection 21.3.

21.5. In arriving at the amount due to Broker under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Broker's final invoice; (2) any claim which City may have against Broker in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding Subsection 21.4; and (4) in instances in which, in the opinion of

the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

21.6. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration.

22.1. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8. Submitting False Claims; Monetary Penalties
10. Taxes
11. Payment Does Not Imply Acceptance of Work
13. Responsibility for Equipment
14. Independent Broker; Payment of Taxes and Other Expenses
15. Insurance
16. Indemnification
17. Incidental and Consequential Damages
18. Liability of City
24. Proprietary or Confidential Information
26. Ownership of Results
27. Works for Hire
28. Audit and Inspection Of Records
48. Modification of Agreement.
49. Administrative Remedy for Agreement Interpretation.
50. Agreement Made in California; Venue
51. Construction
52. Entire Agreement
56. Severability
57. Protection of Private Information

22.2. Subject to the immediately preceding Subsection 22.1, upon termination of this Agreement prior to expiration of the Term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Broker 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. This Subsection shall survive termination of this Agreement.

23. Conflict of Interest. Through its execution of this Agreement, Broker acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information. Broker understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Broker and its subcontractors may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City, to City contractors, and/or to their respective employees. Broker agrees that all information disclosed to Broker by City or other parties in the course of Broker's performance of this Contract shall be held in strict confidence and used only in performance of the Agreement. Broker shall release any of said information only upon the written authorization of the SFMTA or as required by law. Broker shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data. Broker shall comply with all applicable privacy laws, including but not limited to the federal Health Insurance Portability and Accountability Act (HIPAA).

25. Notices to the Parties and City Liaison.

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

To City: Municipal Transportation Agency
One South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103
Attn: Shahn timer Farhangi
Phone: 415-701-4284
Fax: 415-701-4300
Email: Shahn timer.farhaghi@sfmta.com

With a copy to:
City and County of San Francisco
Risk Management Division
25 Van Ness Avenue., Suite 750410
San Francisco, California 94102
Attention: Matt Hansen, Director

Tel: 415-554-2302
Fax: 415-554-2357
Email: matt.hansen@sfgov.org

To Broker: Regina M. Carter
Managing Director
Aon Risk Insurance Services West
199 Fremont Street, 17th Floor
San Francisco, CA 94105
Tel:
Fax:
email: regina.carter@aon.com

25.2 Notice of Default. Any notice of default must be sent by registered mail.

25.3 City Liaison. The SFMTA's Liaison/Project Manager is:

John Funghi, Program Manager
SFMTA Central Subway Project
821 Howard Street
San Francisco, CA 94103
Phone: 415-701-4299
Email: john.funghi@sfmta.com

26. Ownership of Results. Any interest of Broker or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Broker or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Broker may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire. If, in connection with services performed under this Agreement, Broker or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, 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 are the property of the City. If it is ever determined that any works created by Broker or its subcontractors under this Agreement are not works for hire under U.S. law, Broker hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Broker may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records. Broker agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Broker will permit 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. Broker shall maintain such data and records in an accessible location and condition for a period of not less 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 conferred upon City by this Section.

29. Subcontracting. Broker is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment. The services to be performed by Broker are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Broker unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. 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.

32. Earned Income Credit (EIC) Forms. Administrative Code Section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

32.1. Provision of Forms to Employees. Broker shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Broker has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Broker; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

32.2. Failure to Comply. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Broker of the terms of this Agreement. If, within thirty days after Broker receives written notice of such a breach, Broker fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Broker fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

32.3. Flow Down to Subcontractors. Any Subcontract entered into by Broker shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

32.4. Terms. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Claims

33.1. Broker shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the SFMTA Project Manager, including failure or refusal to issue a Contract Modification or Amendment or for the happening of any event, thing, occurrence, or other cause, unless Broker shall have given the SFMTA Project Manager due written notice of potential claim.

33.2. The written notice of potential claim shall set forth the reasons for which Broker believes additional time or additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the SFMTA Project Manager prior to the time that Broker shall have performed the work giving rise to the potential claim for additional compensation, or in all other cases, within 15 days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

33.3. It is the intention of the Parties under this Section that differences between the parties arising under and by virtue of the Contract be brought to the attention of the SFMTA Project Manager at the earliest possible time in order that such matters may be expeditiously resolved, if possible, or other appropriate action promptly be taken. Broker hereby agrees that it shall have no right to additional time or compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which it has failed to provide timely written notice of potential claim, as required herein.

34. Nondiscrimination; Penalties

34.1. Broker Shall Not Discriminate. In the performance of this Agreement, Broker agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

34.2. Subcontracts. Broker shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Broker's failure to comply with the obligations in this Subsection shall constitute a material breach of this Agreement.

34.3. Nondiscrimination in Benefits. Broker 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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

34.4. Condition to Contract. As a condition to this Agreement, Broker shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

34.5. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Broker shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Broker understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this

Agreement may be assessed against Broker and/or deducted from any payments due Broker.

35. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Broker acknowledges and agrees that he or she has read and understood this Section.

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

37. Drug-Free Workplace Policy. Broker acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Broker agrees that any violation of this prohibition by Broker, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation. Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Broker to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act. Broker acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Broker shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Broker agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Broker, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other

proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records. If the Broker receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Broker shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Broker agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Broker further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Broker acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Broker further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions. Through execution of this Agreement, Broker 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. Broker acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Broker further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Broker's board of directors; Broker's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Broker; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Broker. Additionally, Broker acknowledges that Broker must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

43.1. Broker agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Broker's obligations under the MCO is set forth in this Section. Broker is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

43.2. The MCO requires Broker to pay Broker's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Broker is obligated to keep informed of the then-current requirements. Any subcontract entered into by Broker shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Broker's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Broker.

43.3. Broker shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

43.4. Broker shall maintain employee and payroll records as required by the MCO. If Broker fails to do so, it shall be presumed that the Broker paid no more than the minimum wage required under State law.

43.5. The City is authorized to inspect Broker's job sites and conduct interviews with employees and conduct audits of Broker.

43.6. Broker's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Broker fails to comply with these requirements. Broker agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Broker's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

43.7. Broker understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Broker fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Broker fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

43.8. Broker represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

44. Requiring Health Benefits for Covered Employees

44.1. Broker agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

44.2. For each Covered Employee, Broker shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Broker chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

44.3. Notwithstanding the above, if the Broker is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

44.4. Broker's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Broker if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Broker fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Broker fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

44.5. Any Subcontract entered into by Broker shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Broker shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Broker shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Broker based on the Subcontractor's failure to comply, provided that City has first provided Broker with notice and an opportunity to obtain a cure of the violation.

44.6. Broker shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Broker's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

44.7. Broker represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

44.8. Broker shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

44.9. Broker shall keep itself informed of the current requirements of the HCAO.

44.10. Broker shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

44.11. Broker shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

44.12. Broker shall allow City to inspect Broker's job sites and have access to Broker's employees in order to monitor and determine compliance with HCAO.

44.13. City may conduct random audits of Broker to ascertain its compliance with HCAO. Broker agrees to cooperate with City when it conducts such audits.

44.14. If Broker is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Broker later enters into an agreement or agreements that cause Broker's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Broker and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

45.1. Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Broker shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

45.2. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Broker shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Brokers shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

a. Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

b. Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco

Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

c. Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

d. Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be non-duplicative, and facilitate a coordinated flow of information and referrals.

e. Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

f. Set the term of the requirements.

g. Set appropriate enforcement and sanctioning standards consistent with this Chapter.

h. Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

i. Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

45.3. Hiring Decisions. Broker shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

45.4. Exceptions. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

45.5. Liquidated Damages. Broker agrees:

a. To be liable to the City for liquidated damages as provided in this Section;

b. To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this Section;

c. That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations;

d. That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the

financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

e. That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this Section is based on the following data:

i. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

ii. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations;

f. That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

g. Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

45.6. Subcontracts. Any subcontract entered into by Broker shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Broker may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Broker agrees to comply with San Francisco Administrative Code Chapter

12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Broker violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Broker from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Broker's use of profit as a violation of this Section.

47. Preservative-treated Wood Containing Arsenic. Broker may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Broker may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Broker from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Broker shall cooperate with the SFMTA to submit to the SFMTA Contract Compliance Office 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% (SFMTA SBE Form No. 8: Amendments of Professional Services Contracts).

49. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. 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.

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

52. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."

53. Compliance with Laws. Broker shall keep itself fully informed of the City's Charter, codes, ordinances 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.

54. Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Broker, will be paid unless the provider received advance written approval from the City Attorney.

55. Compliance with FTA Procurement Requirements. The Broker will procure goods and services necessary for this Agreement consistent with the requirements of 49 C.F.R. Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," FTA Circular 4220.1F, the FTA Master Agreement, and Applicable FTA Certifications and Assurances.

56. 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.

57. Protection of Private Information. Broker has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Broker agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Broker pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Broker.

58. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the

community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Broker shall remove all graffiti from any real property owned or leased by Broker in the City and County of San Francisco within forty eight (48) hours of the earlier of Broker's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require a Broker to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Broker to comply with this Section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements. Broker agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Broker agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Broker agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather

agreed monetary damages sustained by City because of Broker's failure to comply with this provision.

60. Slavery Era Disclosure

a. Broker acknowledges that this contract shall not be binding upon the City until the Director of Administrative Services receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director of Administrative Services finds that Broker has failed to file an affidavit as required by Section 12Y.4 (a) and this Contract, or has willfully filed a false affidavit, the Broker shall be liable for liquidated damages in an amount equal to the Broker's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director of Administrative Services. Broker acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Broker from any Contract with the City.

c. Broker shall maintain records necessary for monitoring their compliance with this provision.

61. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, 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.

62. Included Appendices. The following documents appended to this Agreement are incorporated by reference as if fully set out herein.

Appendix A: Federal Contract Requirements
Appendix B: Services To Be Provided by Broker
Appendix C: Calculation of Charges
Appendix D: Central Subway Project Schedule

63. Approval by Counterparts. This Contract may be approved by counterpart signature pages, each of which is deemed an original and all of which shall be read together to constitute a single document. Counterpart signature pages shall be delivered by a party to the other party by telephone facsimile or email PDF.

[The rest of this page has been intentionally left blank.]

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Edward D. Reiskin 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: _____ Roberta Boomer, Secretary to the SFMTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney Doc no. _____ (12-12-11)</p>	<p>BROKER</p> <p>Aon Risk Insurance Services West, Inc.</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <hr/> <p>Regina M. Carter Managing Director Aon Risk Insurance Services West 199 Fremont Street, 17th Floor San Francisco, CA 94105</p> <p>City vendor number: 31438</p>
---	---

APPENDIX A**FEDERAL TRANSPORTATION ADMINISTRATION REQUIREMENTS FOR
FEDERALLY FUNDED PERSONAL SERVICES AND PROCUREMENT CONTRACTS**

Broker shall comply with all applicable federal laws and regulations and FTA guidelines and requirements, including but not limited to the following.

1. DEFINITIONS

A. **Approved Project Budget** means the most recent statement, approved by the Federal Transportation Administration (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. **Broker** or **Broker** 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. Department of Transportation.

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 Broker 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.

2. FEDERAL CHANGES

Broker 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. Broker's failure to so comply shall constitute a material breach of this Contract.

3. ACCESS TO RECORDS

A. The Broker 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 Broker which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. The Broker 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 Broker 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 Broker 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 C.F.R. 18.36(i) (11).

4. DEBARMENT AND SUSPENSION

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

5. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

A. The City and Broker 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, Broker, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Broker 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.

6. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Broker agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The Broker agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue, including, but not limited to, 49 C.F.R. § 26. The Broker shall also comply with the provisions of the SFMTA's Small Business Enterprise (SBE) Program for Professional and Technical Services.

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 Broker 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 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Broker 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 Broker 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 Broker agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Broker 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 Broker agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Broker agrees to comply with any implementing requirements FTA may issue.

C. The Broker also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

7. ENERGY CONSERVATION REQUIREMENTS

The Broker 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.

8. CLEAN WATER REQUIREMENTS

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

9. CLEAN AIR

A. Broker 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 Broker 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 Broker also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

10. PRIVACY

If Broker or its employees administer any system of records on behalf of the Federal Government, Broker 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, Broker agrees to obtain the express consent of the Federal Government before the Broker or its employees operate a system of records on behalf of the Government. Broker 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 Broker 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.

11. DRUG AND ALCOHOL TESTING

To the extent Broker, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Broker 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 C.F.R. Part 655.

12. TERMINATION FOR CONVENIENCE OF City

See Agreement Terms and Conditions.

13. TERMINATION FOR DEFAULT

See Agreement Terms and Conditions.

14. BUY AMERICA

The Broker agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include microcomputer equipment, software, and small purchases (\$100,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j) (2) (C) and 49 C.F.R. 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

15. CARGO PREFERENCE – USE OF UNITED STATES FLAG VESSELS

The Broker agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Broker in the case of a subcontractor’s bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

16. RECYCLED PRODUCTS

The Broker agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

17. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Broker acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT

regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Broker 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 Broker 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 Broker to the extent the Federal Government deems appropriate.

B. The Broker 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 Broker, to the extent the Federal Government deems appropriate.

C. The Broker 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.

19. FLY AMERICA

The Broker agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. 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 Broker 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 Broker agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

20. DISALLOWANCE

If Broker claims or receives payment from City for a service, reimbursement for which is later disallowed by the United States Government or other government authority, Broker 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 Broker under this Agreement or any other Agreement. By executing this Agreement, Broker certifies that Broker is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Broker acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

21. 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 4220.1E, 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 Broker 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.

[Remainder of this page intentionally left blank.]

APPENDIX B SERVICES TO BE PROVIDED BY BROKER

I. Background:

Barnard Impregilo Healy (“BIH” or “Contractor”), the contractor selected by the SFMTA for the construction of the tunnels under SFMTA Contract CS-156, and Marsh (BIH's insurance broker) have proposed to meet the \$500 Million general liability requirement of Contract CS-156 through a layered insurance program. Under that proposed insurance program, BIH would provide as primary (first layer) coverage \$200 Million in project specific general liability insurance. The City would then procure a Project Specific Rolling \$150 Million in excess liability insurance “secondary”, which would be a second layer of insurance excess to the \$200 Million project specific policy provided by BIH. This layer would be rolling to cover the tunnel contract as well as the three station contracts (Moscone, Chinatown and Union Square/Market Street). Under its proposed program, BIH would also provide \$150 Million in excess liability insurance as a third layer of coverage, excess to the primary (\$200 Million) and secondary (\$150 Million) layers.

II. Broker's Services - Overview

As described herein, at no additional cost to the City, Broker shall provide insurance broker services, advice, assistance and other consulting services as described below to the SFMTA concerning the procurement, placement, implementation, and servicing of a Project Specific Rolling excess Liability insurance program for the Central Subway Project.

- A. Broker shall review its evaluation of the risks associated with the construction of the Central Subway Project tunnels and three underground (subway) stations, and advise the SFMTA as to the scope and limits of insurance coverage required to mitigate those risks.
- B. Broker shall review all construction contractor policies covering the construction of the CSP tunnel and the three subway stations to:
 1. ensure that the Contractor’s primary Liability Insurance policy is appropriate and adequate to meet the City’s needs, per the Contract requirements
 2. ensure the Contractor’s primary program allows the Project Specific Rolling excess liability layers can follow and be utilized as a rolling excess liability program for the construction of the Moscone, Union Square/Market Street, and Chinatown subway stations.

III. General Requirements

In performing services under this Agreement. Broker shall comply with the following general requirements.

A. Tasks

1. Broker shall act as an independent insurance advisor to the SFMTA for the Central Subway Project ("CSP" or "Project") and proactively provide ongoing unbiased professional advice and recommendations that benefit the SFMTA and the City.
2. Broker shall proactively provide ongoing review and analysis of insurance programs for the Project and identification of risk transfer and risk financing options.
3. Broker shall be familiar with:
 - a. The coverages provided by all relevant insurance policies and documents covering the CSP, including policies procured by the City and policies and other coverage provided by construction contractors for the CSP.
 - b. The exposures of the City arising from the CSP.
4. Broker shall assure that insurance policies procured under this Agreement are placed in a timely manner, without lapses in coverage periods, with reputable and financially responsible insurers.
5. Broker shall service insurance policies placed for the City related to the construction of the CSP, including processing all changes and endorsements and verifying the accuracy of invoices within a reasonable time.
6. Broker shall provide to the City early warning of rate and coverage changes or renewal problems through a mutually agreeable process. Broker shall promptly advise the SFMTA and City's Risk Manager of any changes in exposure during the policy term that would require revisions to existing insurance coverages. Upon request of the City, but at least once a year, Broker shall provide a comprehensive report that reviews the coverages placed under this Agreement.
7. Broker shall continually monitor CSP operations and Project loss exposures and make any appropriate recommendations for coverage changes or new coverages.
8. Broker shall answer questions and obtain answers from underwriters for policy coverage questions. Broker shall on reasonable notice meet with SFMTA and City Risk Management staff, CSP contractors and consultants, City Boards, City committees, and/or staff of City departments when requested.

9. Provide consultation service and written reports as normally expected of a professional broker to a large client including Risk Management-related training and online resource development, related to this type of policy.
10. Provide assistance with claims as requested by City. Assist in analyzing loss exposures arising from the CSP, and determine the appropriate risk management alternatives, including types, availability, cost and extent of coverages that should be considered.

B. Policy Review

1. Review policies and other documents in detail within 14 days of receipt of the documents to check the wording and accuracy of each policy, binder, certificate, endorsement or other document received from insurers to ensure that the intended coverage is provided, and all coverage, terms and conditions, and other wording is complete and accurate, and in compliance with financial arrangements and administrative procedures acceptable to City.
2. Obtain revisions needed to achieve compliance with coverage request. Timely forward to the City the original policies with a sheet attached bearing the signature of the person responsible for compliance review.
3. Provide a timeline for issuance of policy forms prior to issuance of premium invoice and provide sufficient copies of policies in both hard copy and digital media (or via secure online sources) to City Risk Management and SFMTA.
4. Provide copy of the policies, upon request by the Contractor or the City.

C. Policy Amendments

1. Process requests for additions or deletions to policies within five business days of receipt.
2. Provide City with copies of initial correspondence to the insurers. Follow up every two weeks from request date until the insurer has handled request.
3. Advise in writing of any changes to insurance policy(ies) within 14 days of Broker's receipt of notice or other knowledge of the change.

D. Marketing

1. Monitor expiration dates of policies and provide City written notification at least 180 days prior to expiration, including a description of information needed to process the renewal.

2. Work with the SFMTA to develop and implement a marketing strategy, including identifying potential markets, for program renewals within agreed timelines.
3. Develop underwriting information and assist in gathering and organizing exposure and loss data for replacement of policies, including completing applications as necessary.
4. Provide actuarial and statistical analysis of loss and expense data to assist in the establishment of premium, and targets for various layers of risk.
5. Work with carriers to design policies and programs most advantageous to the City for coverage of exposures, policy form, exclusions, deductibles, self-insured retentions, coordination with other policies, costs and other pertinent factors.
6. Advise of and include SFMTA representatives in marketing meetings with prospective carriers.
7. Market renewal coverages for City by obtaining timely and competitive quotations from available and responsible insurers.
8. Provide indications to City at least 90 days prior to insurance policy expiration unless otherwise approved by City.
9. When more than one market is approached for a line of coverage, provide SFMTA with copies of declination letters and all premium quotations received with a summary of coverages explaining deficiencies or benefits of the quote compared to the recommended insurance program.
10. Provide quotations for specialized types of insurance, as requested by City.

E. Claims

1. Assist City departments and staff, as necessary, with filing claims on assigned insured programs.
2. Promptly notify City of any losses or accidents reported to Broker and work with internal or outside claims adjustors as necessary.
3. Represent the interests of City and its departments in policy interpretation and other negotiations with insurance carriers.
4. Assist City with review of claim reserves, and represent City to the insurer with regard to requested explanation or reduction of reserve amounts. Follow-up with insurer every 30 days until resolution of any reserve reduction requests are accomplished or until claim is closed.
5. For all lines of insurance where loss runs are not otherwise available, provide regular (e.g. quarterly) loss runs indicating the member name, claim status, amount paid, reserves, expected outcomes of cases, and other summary information.
6. Review all quarterly loss runs for all claims on all coverages. Evaluate loss history for trends or other indicators that might dictate changes in coverage strategy. Identify any relevant issues and advise City in writing.
7. Provide annual summaries by policy year for each of the last five years indicating total number of losses by type for each line of coverage and showing earned premium, incurred losses and loss ratio.

F. Certificates of Insurance and Brokers Endorsements

Broker shall issue certificates of insurance and Broker's endorsements of coverage within three (3) business days following the date of SFMTA request.

G. Billing

1. As directed by City, issue invoices to SFMTA for premiums due for insurance.
2. Maintain appropriate accounting of amounts due, receipts, and payments to insurers.
3. Process Final Audits for each policy.

H. Legal Compliance

1. Comply with all State and Federal laws and regulations pertaining to insurance brokers licensed in the State of California.

J. Stewardship

At least 180 days prior to program anniversary, provide City with a written annual service summary for the policy year to include:

1. A schedule of coverage showing nature of coverage, limits, deductibles, insurer, policy number, premium and other relevant information.
2. Summary of team servicing this account.
3. Anticipated renewal terms and conditions and other indications of market conditions, trends and anticipated changes.
4. Identified problem areas such as claim handling, safety hazards, insurer financial problems, etc.
5. Recommendations for improved program design.
6. Services performed for the current year and planned for the next year.
7. Accounting of all income received on this account.

K. Additional Services

The Scope of Work under this Agreement may be modified through negotiation and by written and signed addendum.

APPENDIX C CALCULATION OF CHARGES

Note: The fees schedule and other compensation listed in the final Contract will be based on the selected Proposer's price bid submitted with its Proposal. The City anticipates that the compensation provisions of the final Contract will set out terms substantially similar to the following:

- 1. Total Amount.** The total amount of this Contract, inclusive of all broker's fees, administrative costs and charges, insurance premiums paid through Broker and other charges for all services provided by Broker, shall not exceed, Nine Million Eight Hundred Eight Thousand Seven Hundred Fifty Dollars (\$9,808,750).
- 2. Fees.** As compensation for all services provided under this Agreement, including but not limited to program planning, marketing, placement, implementation and servicing of insurance policies, the SFMTA shall pay Broker standard commissions to be included in the Cost of Premiums. Broker shall disclose the amounts and percentages of its fees as provided in Sections 5.4, 5.5. and 5.6 of the Contract.
- 3. Invoices.** Invoices furnished by Broker under this Contract must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by City to Broker shall be subject to audit by City.
- 4. Payment.** Payment shall be made by City to Broker at the address specified in the section entitled "Notices."
- 5. Cost of Premiums.** Total cost for insurance provided under this Agreement, including all Brokers fees, Surplus Lines taxes and government fees, shall not exceed Nine Million Eight Hundred and Fifty Thousand Dollars (\$9,808,750,000).
- 6. Taxes.** The aforesaid amounts for the Premiums specified in this Contract are inclusive of all federal, state and local sales taxes, use, excise, receipts, gross income and other similar taxes and governmental charges.
- 7. Late Payments.** In no event shall City be liable for interest or late charges for any late payments.
- 8. Commissions.** Broker's Fees set out herein shall be full and complete compensation for all Program services for the insurance procured under this Contract. Broker and its officers, agents and employees shall not accept or receive any additional commissions or payments from insurance companies, agents or affiliates as a result of or in relation to any excess liability, or other insurance contract for the said insurance coverages.

If agreements with insurers require Broker to receive commissions in regard to the coverages provided under this Agreement, Broker will promptly notify City of such commissions and will credit an amount equal to the excess received and retained against any other amount owing to Broker.

9. Other Service Providers. City may chose to use a property appraiser, safety control service, structured settlement firm or other similar service provider in connection with the insurance coverages Broker places for City or the services Broker provides to City. If City elects to use a service provider from which Broker or its corporate parents, subsidiaries or affiliates will receive any compensation directly or indirectly relating to the services City purchases from the provider, Broker will disclose additional information regarding that compensation to City before City makes a final decision to use the service provider.

**APPENDIX D
CENTRAL SUBWAY PROJECT SCHEDULE**

Note: The final Central Subway Project Schedule on which this Contract will be based will be set out herein, subject to change by changes to the Project Schedule arising from changes in design or construction.