

THIS PRINT COVERS CALENDAR ITEM NO.: 12

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Contract No. SFMTA-2020-20, Advanced Train Control System Equipment, Software and Professional Services Task Order Agreement, with Thales Transport & Security, Inc., for the Advanced Train Control System, in an amount not to exceed \$30,000,000 and an initial term of seven years with an option to extend the term for an additional two years; and urging the Board of Supervisors to approve the contract.



SUMMARY:

- In 1992, SFMTA awarded Contract No. MR-1034R to Alcatel Transport Automation (U.S.), Inc., now Thales Transport & Security (Thales), to design and install a communications-based Automatic Train Control System (ATCS), which went into revenue service in 1998.
- Contract No. 2020-20 is a new agreement providing proprietary equipment and services for the ATCS, in an amount not to exceed \$30,000,000 and an initial term of seven years with an option to extend two years. Work will be contracted on a task-order basis, as each task's scope is defined and funding is identified independently.
- This agreement establishes the terms and conditions and labor rates for the work; the price, milestone dates, and scope of services will be negotiated in the individual task orders. Procured tasks to follow normal contract approval thresholds.
- On May 15, 2020, the Director of Transportation authorized sole source negotiations with Thales, the only vendor able to supply the proprietary services, software and equipment for the ATCS.
- This task order agreement is subject to approval by the San Francisco Board of Supervisors under Charter Section 9.118, as the contract expenditures are anticipated to exceed \$10,000,000.

ENCLOSURES:

1. SFMTAB Resolution
2. SFMTA Contract No. SFMTA-2020-20-FTA

APPROVALS:

	DATE
DIRECTOR <u></u>	<u>September 8, 2020</u>
SECRETARY <u></u>	<u>September 8, 2020</u>

ASSIGNED SFMTAB CALENDAR DATE: September 15, 2020

PAGE 2.

PURPOSE

Authorizing the Director of Transportation to execute Contract No. SFMTA-2020-20, Advanced Train Control System Equipment, Software and Professional Services Task Order Agreement, with Thales Transport & Security, Inc., for the Advanced Train Control System, in an amount not to exceed \$30,000,000 and an initial term of seven years with an option to extend the term for an additional two years.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

Strategic Goal 1: Create a safer transportation experience for everyone

Objective 1.2: Improve the safety of the transit system.

Strategic Goal 2: Make transit and other sustainable modes of transportation the most attractive and preferred means of travel

Objective 2.1: Improve transit service.

Objective 2.2: Enhance and expand use of the city's sustainable modes of transportation.

Transit First Policy 1: To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

Transit First Policy 2: Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

DESCRIPTION

In August 1992, the City, through its Public Utilities Commission, awarded Contract No. MR-1034R with Alcatel (now Thales Transport and Security), to provide a communications-based Advanced Train Control System (ATCS) to the Municipal Railway. The ATCS has been in revenue service since 1998.

The ATCS controls light rail vehicles operating in the Metro subway. It enhances light rail system performance and safety by controlling train speed, braking, routing and headways (the time between trains) more efficiently and accurately than can be accomplished by manual operator control. The ATCS also transmits train status information to passengers through the SFMTA's subway station sign and public address systems, and provides real-time train location data to the NextMuni arrival prediction system for trains in the subway and outside the range of Global Positioning Satellite (GPS) vehicle tracking devices.

The ATCS has 30-year design life, and will be in service through at least 2028, and potentially longer. This life cycle is consistent with other train-control systems worldwide. If the SFMTA

PAGE 3.

appropriately maintains and upgrades the ATCS, it should meet the SFMTA's operational requirements for the next eight years.

The ATCS software and equipment are proprietary to Thales, so any required system updates and development of additional ATCS features and functions, and integration with new planned systems can only be obtained from Thales. It is necessary to periodically upgrade ATCS hardware and software to maintain the ATCS, to implement new and improved safety and operational functions, and to adapt the ATCS to changes in the SFMTA's rail operations.

Under the proposed Contract, the SFMTA would issue task orders to procure proprietary ATCS software, equipment and related services. The terms and conditions of those task orders are set out in the Contract; the price, milestone dates and scope of services will be set out in the individual task orders. The SFMTA previously entered into two sole source contracts with Thales to obtain proprietary ATCS technical services, software and equipment to maintain and improve the function of the ATCS, which are now expired. (SFMTA Contract No. 1221 Framework Master Agreement for Purchase Order to obtain ATCS goods and services from Thales, dated August 2006, for an amount not to exceed \$5,000,000 and SFMTA Contract No. 1226 Advanced Train Control System Improvement Services, dated April 21, 2009.) Those contracts are nearly identical to the proposed Contract, which will allow the SFMTA to procure from Thales necessary equipment, services, to update the ATCS, more efficiently and with reduced transactional costs as compared to negotiating multiple contracts with Thales.

Staff have identified over \$29,000,000 in subway train control infrastructure investment which the SFMTA may implement as funding and Agency resources allow. Staff anticipates that the following equipment and software and associated services would be procured the proposed Contract:

- a. Software functionality upgrades
- b. Integration of subway train control with surface interlocks
- c. Upgrade of trains and main computers to allow tracking and management of surface operations
- d. Equipment and software to maintain a state-of-good repair
- e. Analysis of system operations and recommendations for improvement
- f. Hardware/software design, implementation, and test resources to support this scope

Tasks procured under this agreement shall follow required Director, MTAB, and BOS approval thresholds for contract value.

This Contract was procured in accordance with federal requirements for sole source contracts.

Due to the proprietary nature of the current scope of services, it was determined by the Contract Compliance Office that Small Business Entity (SBE) subcontracting participation requirement is not applicable to this contract. Changes or additions to the anticipated scope will be resubmitted to Contract Compliance for evaluation.

PAGE 4.

STAKEHOLDER ENGAGEMENT

The transit division service owner was involved in defining the scope of services to be delivered under this agreement.

ALTERNATIVES CONSIDERED

The ATCS and its components, including software, are proprietary technology of Thales. Compatible equipment, software, and specialized technical service can be procured only from Thales.

The alternatives to approving this contract are to not implement any ATCS enhancements and discontinue state of good repair projects for the ATCS, or to negotiate multiple contracts with Thales for necessary ATCS services, software and equipment. The first alternative would result in increased disruption to passenger service due to failures of ATCS equipment approaching obsolescence and the inability to address changes to transit service that impact subway operations. The second option would require negotiating many contracts with Thales, resulting in additional transaction costs, differing contract terms and conditions, and delays to ATCS improvements.

FUNDING IMPACT

This agreement does not authorize the expenditure of any funds. A funding plan will be developed specific to each task order. It is anticipated these task orders will be funded through the Fixed Guideway Capital Program. The FY21-FY25 Capital Improvement Program was approved with over \$50M of funding dedicated to programmatic categories eligible for this type of work. These types of grants use 20% local funds to leverage for the remaining 80% which come from federal funds.

ENVIRONMENTAL REVIEW

On April 1, 2020, the SFMTA, under authority delegated by the Planning Department, determined that the Thales Transportation and Securities' ATCS Service contract approval is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Personal Services Contract (PSC) 45971 - 19/20 was approved by the Civil Service Commission (CSC) on 10/21/19.

PAGE 5.

Contract No. SFMTA-2020-20 is contingent upon approval by the San Francisco Board of Supervisors under Charter Section 9.118, as the contract expenditures are anticipated to exceed \$10,000,000.

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

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Contract No. SFMTA-2020-20, Advanced Train Control System Equipment, Software and Professional Services Task Order Agreement, with Thales Transport & Security, Inc., for the Advanced Train Control System, in an amount not to exceed \$30,000,000 and an initial term of seven years with an option to extend the term for an additional two years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, In August 1992, the City, through its Public Utilities Commission, awarded Contract No. MR-1034R with Alcatel (now Thales Transport and Security), to provide a communications-based Advanced Train Control System (ATCS) to the Municipal Railway; and,

WHEREAS, The ATCS is a specialized system critical to the operation of light rail vehicles in the subway, controlling vehicle routing, speed, headway, safe separation, and braking; and,

WHEREAS, The ATCS is a custom system that provides location and arrival prediction data for passenger information systems using proprietary hardware and software available only from Thales; and,

WHEREAS, The SFMTA seeks to update the functionality of the ATCS by obtaining from Thales specialized technical services, equipment and software upgrades for the ATCS that are not available from other vendors; and,

WHEREAS, The SFMTA wishes to obtain software, hardware, and related services to maintain and improve the ATCS under Contract No. SFMTA-2020-20, which is more efficient and saves on transactional costs, as compared to negotiating a separate contract for each ATCS procurement; and,

WHEREAS, This Contract was procured in accordance with federal requirements for sole source contracts; and,

WHEREAS, On April 1, 2020, the SFMTA, under authority delegated by the Planning Department, determined that the services, software and equipment to be procured under the Contract 2020-20 is not a “project” under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now, therefore, be it,

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2020-20, Advanced Train Control System Equipment, Software and Professional Services Task Order Agreement, with Thales Transport & Security, Inc., for the Advanced Train Control System, in an amount not to exceed \$30,000,000 and an initial term of seven years with an option to extend the term for an additional two years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of Tuesday, September 15, 2020.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**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

**Thales Transport & Security, Inc. for Advanced Train Control
System Equipment, Software and Professional Services**

Contract No. SFMTA-2020-20-FTA

Table of Contents

Article 1 Purpose of Contract, Task Orders, and Defined Terms Definitions..... 2

1.1 Purpose of Contract..... 2

1.2 Task Orders 2

1.3 Definitions..... 2

Article 2 Term of the Agreement 5

Article 3 Financial Matters..... 5

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation..... 5

3.2 Guaranteed Maximum Costs..... 6

3.3 Compensation 6

 3.3.1 Amount 6

 3.3.2 Method of Computing Compensation..... 6

 3.3.3 Payment..... 6

 3.3.4 Payment Limited to Satisfactory Services 7

 3.3.5 Invoice Format 7

 3.3.6 Progress Payment Form 7

 3.3.7 Reserved. (SBE Payment)..... 8

 3.3.8 Getting Paid for Goods and/or Services from the City..... 8

 3.3.9 Grant-Funded Contracts..... 8

3.4 Audit and Inspection of Records..... 9

3.5 Submitting False Claims 9

3.6 Payment of Prevailing Wages 10

Article 4 Services and Resources..... 12

4.1 Services Contractor Agrees to Perform 12

4.2 Priority of Documents..... 12

4.3 Information and Data 12

4.4 Presentations 12

4.5 Task Requirements..... 12

 4.5.1 Scope of Work 13

 4.5.2 Contractor Proposal 13

 4.5.3 Negotiation of Cost and Profit 13

 4.5.4 Record of Negotiations 13

 4.5.5 Reserved. (Subcontracting Goals) 13

4.5.6	Controller Certification.....	14
4.5.7	Notice to Proceed.....	14
4.5.8	Changes.....	14
4.5.9	Failure to Agree on Terms of Task.....	14
4.6	Assigned Personnel.....	14
4.7	Current Workload and Available Resources.....	14
4.8	Transmittal of Work Product.....	15
4.9	Agency’s Responsibilities Regarding Submittals.....	15
4.10	Subcontracting.....	15
4.11	Independent Contractor; Payment of Employment Taxes and Other Expenses.....	15
4.11.1	Independent Contractor.....	15
4.11.2	Payment of Employment Taxes and Other Expenses.....	16
4.12	Assignment.....	17
4.13	General Warranty.....	17
4.14	Delays.....	17
4.14.1	Delay Due to Contractor.....	17
4.14.2	Delay Not Due to Contactor.....	18
4.15	Bonding Requirements.....	18
4.16	Restoration of ATCS to Prior Operating Condition.....	18
	Article 5 Insurance and Indemnity.....	18
5.1	Insurance.....	18
5.2	Indemnity, Defense and Liability.....	23
5.3	Not Used.....	26
5.4	Release of Hazardous Materials.....	26
	Article 6 Reserved. (Liabilities of the Parties).....	27
	Article 7 Payment of Taxes.....	27
7.1	Contractor to Pay All Taxes.....	27
7.2	Possessory Interest Taxes.....	27
7.3	Withholding.....	28
	Article 8 Termination and Default.....	28
8.1	Termination for Convenience.....	28
8.2	Termination for Default; Remedies.....	29
8.3	Non-Waiver of Rights.....	31
8.4	Rights and Duties upon Termination or Expiration.....	31

Article 9 Software Licenses and Documentation	32
9.1 Software License.....	32
9.2 License of Documentation	33
Article 10 Rights In Deliverables.....	33
Article 11 SFMTA Responsibilities.....	33
11.1 Appoint Systems Manager and Contact Persons	33
11.2 Access To ATCS.....	34
11.3 Contractor Working Space.....	34
11.4 Service Activities	34
11.5 Logbook	34
11.6 Access to Tools, Documentation, Parts	34
11.7 Copies of Software and Documentation	34
11.8 Maintenance Records.....	34
Article 12 Additional Requirements Incorporated by Reference	35
12.1 Laws Incorporated by Reference	35
12.2 Conflict of Interest	35
12.3 Prohibition on Use of Public Funds for Political Activity.....	35
12.4 Nondiscrimination Requirements	35
12.4.1 Nondiscrimination in Contracts	35
12.4.2 Nondiscrimination in the Provision of Employee Benefits	35
12.5 Reserved. (Small Business Enterprise Program)	35
12.6 Minimum Compensation Ordinance.....	36
12.7 Health Care Accountability Ordinance	36
12.8 First Source Hiring Program.....	36
12.9 Alcohol and Drug-Free Workplace.....	36
12.10 Limitations on Contributions	36
12.11 Services Provided by Attorneys.....	37
12.12 Consideration of Criminal History in Hiring and Employment Decisions.....	37
Article 13 Security Sensitive Information and Critical Infrastructure Information	38
13.1 Security Sensitive Information	38
13.2 Use of SSI Documents	38
13.3 Disposal of the SSI Documents	38
13.4 Liability for Failure to Secure or Misuse of the SSI Documents.....	39
13.5 Subcontractors.....	39

Article 14 General Provisions	39
14.1 Notices to the Parties	39
14.2 Compliance with Americans with Disabilities Act.....	39
14.3 Incorporation of Recitals.....	40
14.4 Sunshine Ordinance	40
14.5 Modification of this Agreement.....	40
14.6 Dispute Resolution Procedure.....	40
14.6.1 Negotiation; Alternative Dispute Resolution.....	40
14.6.2 Government Code Claim Requirement.....	41
14.7 Agreement Made in California; Venue.....	41
14.8 Construction.....	41
14.9 Entire Agreement	41
14.10 Compliance with Laws	41
14.11 Severability	41
14.12 Cooperative Drafting	42
14.13 Notification of Legal Requests	42
14.14 Force Majeure	42
14.15 English Required.....	42
14.16 Services Provided by Attorneys.....	42
14.17 Federal Contract Requirements.....	43
14.18 Signature by Counterparts.....	43
14.19 Included Appendices.....	43
Article 15 SFMTA Specific Terms	43
15.1 Large Vehicle Driver Safety Training Requirements	43
15.2 Delivery, Title and Risk of Loss in Shipping	44
Article 16 Data and Security.....	44
16.1 Nondisclosure of Private, Proprietary or Confidential Information	44
Article 17 MacBride Principles and Signature	46
17.1 MacBride Principles – Northern Ireland.....	46

**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
Thales Transport & Security, Inc. for Advanced Train Control System Equipment,
Software and Professional Services
Contract No. SFMTA-2020-20-FTA**

This Agreement is made as of _____, in the City and County of San Francisco (City), State of California, by and between Thales Transport & Security, Inc, whose principal place of business is at 5500 Corporate Drive, Suite 500, Pittsburgh, PA 15237, U.S.A., (Contractor) and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA's Advanced Train Control System (“ATCS”) is a proprietary system that was supplied to the SFMTA by Contractor (formerly Alcatel Transport Automation (U.S.) Inc.) under San Francisco Municipal Railway contract MR 1034R, dated August 10, 1992.

B. The ATCS is a specialized system critical to the functioning and control of the City's public transit system that requires upgrades, improvements and expansion of the ATCS Software and hardware to meet current and future SFMTA needs. Due to the proprietary nature of the ATCS, no vendor other than Contractor can supply the necessary maintenance services to the SFMTA, and this Agreement is necessarily therefore a sole source contract.

C. The SFMTA has determined that it requires updates, upgrades and special services for ATCS Software and Equipment to maintain, upgrade, improve and operate the ATCS.

D. The SFMTA wishes to contract with Thales Transportation & Security, Inc. who will provide Professional Services and Equipment on SFMTA Advanced Train Control System (ATCS) performing required system upgrades to the software and equipment.

E. This Agreement was procured through the single source requirements for sole source contracting under federal guidelines, consistent and in compliance with FTA Circular 4220.1E FTA Circular 4220.1F, Chapter VI, paragraph 3.i. – Other Than Full and Open Competition.

F. There is no Small Business Entity (SBE) subcontracting participation requirement for this Agreement.

G. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4591-19/20 on 11/05/2018.

Now, THEREFORE, the parties agree as follows:

Article 1 Purpose of Contract, Task Orders, and Defined Terms Definitions

1.1 Purpose of Contract. The purpose and intent of this Contract is for the Contractor to provide the SFMTA services, Software, Documentation, Software configuration and customization, labor, supervision, materials, equipment, and other required acts (“Work”), as generally described in Appendix A to this Agreement, that are necessary to maintain, upgrade, modify, configure, customize, and expand the Automatic Train Control System provided by Contractor under San Francisco Municipal Railway contract MR-1034R, dated August 10, 1992.

1.2 Task Orders.

1.2.1 The SFMTA will issue Task Orders to Contractor for Work necessary for the purpose described in the preceding paragraph. A Task Order will describe: a) the Work Contractor shall perform; b) the time in which that Work (and any milestones or subtasks) shall be completed; c) information, documents, or tasks that the SFMTA will provide or perform to assist Contractor in performing the Work; d) the warranty period of said Work; e) acceptance and testing criteria; f) the compensation the SFMTA shall pay to Contractor for properly performed and completed Work.

1.2.2 A Task Order must be signed by both authorized representatives of each party to be valid. The Director of Transportation or his designee is authorized to approve Task Orders on behalf of the SFMTA. General Manager (GM) or approved delegates are authorized to approve Task Orders on behalf of Contractor.

1.2.3 A Task Order amends this Contract only as to those issues described in this Section 1.2 and the specific scope of Work described in the Task Order, unless otherwise stated therein.

1.3 Definitions.

The following definitions apply to this Agreement. Where any word or phrase defined below, or a pronoun in place of the word or phrase, is used in any part of this Agreement, it shall have the meaning set forth below:

1.3.1 “**Additional Work**” means services, work, software, reports or other deliverables that are not within the scope of a given Task Order, but are necessary for the completion of that Task Order, and that are not incidental work reasonably included within or necessary to the performance of agreed Services.

1.3.2 “**Agreement**” or “**Contract**” mean this contract document, including all attached appendices, any future amendments, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.3.3 “**ATCS**” means the Advanced Train Control System provided to the SFMTA by the Contractor. The term “Contract” is used interchangeably with the term Agreement.

1.3.4 “**CCO**” means SFMTA Contract Compliance Office.

1.3.5 “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency.

1.3.6 “**City Data**” or “**Data**” means all data given to Contractor by City in the performance of this Agreement.

1.3.7 “**CMD**” means the Contract Monitoring Division of the City.

1.3.8 “**Confidential Information**” means information concerning the ATCS that is not public information, that is proprietary to a Party, or that if released may present a risk or threat to public safety or SFMTA transit operations, or that is otherwise not public information under applicable public records laws.

1.3.9 “**Contract Administrator**” means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

1.3.10 “**Contractor**” or “**Thales**” mean Thales Transport & Security, Inc.

1.3.11 “**C&P**” means SFMTA Contracts and Procurement.

1.3.12 “**Days**” (whether or not capitalized) means consecutive calendar days, including weekends and holidays, unless otherwise specified.

1.3.13 “**Deliverables**” means the Equipment, Software, Services and other Work that Contractor agrees to provide to the SFMTA under a Task Order.

1.3.14 “**Director**” means the Director of Transportation: The Executive Director/Chief Executive Officer of the Municipal Transportation Agency of the City and County of San Francisco.

1.3.15 “**Effective Date**” means the date upon which the SFMTA notifies Contractor in a written Notice to Proceed that the City’s Controller has certified the availability of funds for this Agreement as provided in Section 3.1.

1.3.16 “**Equipment**” means the ATCS hardware, computers, servers, and other ATCS components, diagnostic and simulation tools, spare parts and other parts and electronic, mechanical or electrical components to be supplied by the Contractor under this Agreement as specified in the applicable Task Order.

1.3.17 “**Force Majeure**” means any act of God or any other cause beyond a Party’s control (including, but not limited to, any restriction, strike, lock-out, plant shutdown, material shortage, delay in transportation or delay in performance by its suppliers or subcontractors for any similar cause).

1.3.18 “**Mandatory City Requirements**” means those City laws set forth in the San Francisco Municipal Code, that impose specific duties and obligations upon Contractor, including the duly authorized rules, regulations, and guidelines implementing such laws.

1.3.19 “**Party**” and “**Parties**” mean the City and Contractor either collectively or individually.

1.3.20 “**Project Manager**” means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.

1.3.21 “**Purchase Order**” means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 2.1.

1.3.22 “**San Francisco Municipal Transportation Agency**” or “**SFMTA**” means the agency of City with jurisdiction over all surface transportation in San Francisco, as provided under Article VIIIA of the City’s Charter.

1.3.23 “**Services**” means the Work performed by Contractor under this Agreement as specifically described in particular Task Order, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under a particular Task Order. It also refers to ATCS design, engineering, configuration, software design, testing and related services necessary for the maintenance, improvement, and operation of the ATCS.

1.3.24 “**Small Business Enterprise**” or “**SBE**” means a for-profit, small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in 49 Code of Federal Regulations (CFR) Section 26.5.

1.3.25 “**Software**” means all or any part of the specific collection of computer programs and/or machine-readable instructions bundled with or embedded in the Equipment provided by Contractor under this Agreement, whether as a stand-alone product or pre-installed on Equipment. Software shall include any updates or upgrades to the original ATCS software that may be licensed to the SFMTA pursuant to this Agreement.

1.3.26 “**Systems Manager**” means the individual designated by City to be the primary liaison to Contractor for the purposes of this Agreement.

1.3.27 “**Task Order**” means a written and executed amendment of this Agreement under which Contractor will provide ATCS Equipment, Software, and/or Services, as described and priced in the Task Order.

1.3.28 “**Term**” means the period the parties are obligated by the provisions of this Contract, as set out in Article 2.

1.3.29 “**Thales Affiliate**” means a company which controls, is controlled by, or is under the common control with the Contractor, but only for as long as such control exists; for the purposes of this clause, control is deemed to exist when the company in question has the authority, directly or indirectly through one or more intermediaries, to direct or utilize the voting rights of more than 50% of the stock entitled to vote for directors, general managers or persons performing a similar function, whereby such authority may exist by ownership of such stock or by contract.

1.3.30 “**Work**” means Services.

Article 2 Term of the Agreement

2.1 The Term of this Agreement shall commence on the later of the Effective Date, and expire seven years later, unless earlier terminated as otherwise provided herein.

2.2 The Parties may extend the Term of this Contract for a period of two years, for a total Term not to exceed nine years commencing on the Effective Date. The Director of Transportation is authorized to approve said extension by issuing a Contract Amendment as provided in Section 14.5 (Modification of this Agreement).

Article 3 Financial Matters

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

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

3.2 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 14.5 (Modification of this Agreement).

3.3 Compensation.

3.3.1 Amount. Compensation under this Agreement shall be based on either a negotiated lump sum price per task or subtask, or actual direct costs plus a negotiated fixed profit per subtask and task. Unless amended as provided in Section 14.5, in no event shall the amount of this Agreement exceed Thirty Million Dollars (\$30,000,000) for the Term of this Contract.

3.3.2 Method of Computing Compensation. The SFMTA will compensate Contractor for a Task Order using negotiated lump sum pricing for each Task. A negotiated lump sum price compensates Contractor for all costs and expenses (including but not limited to salary and other labor costs, benefits, materials and equipment costs, applicable sales tax and profit). Contractor assumes the risk that the level of effort required to complete a Task may exceed the negotiated lump sum compensation negotiated for a Task. The SFMTA will not receive a credit or refund if the Contractor completes the Task with less effort or resources than estimated when the parties negotiated the lump sum price for that Task. The parties may divide the negotiated lump sum price for a Task into milestone payments that the City shall pay upon Contractor's completion of Work or deliverables specified in the Task Order.

3.3.3 Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Deliverables and Services completed in the immediately preceding month under a particular Task Order, unless a different payment schedule is provided in the Task Order. Compensation shall be made for Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. The Contract Sum of this Agreement, that is the sum value of all Task Orders issued under this Agreement, shall not exceed Thirty Million United States Dollars (\$30,000,000 U.S.) In no event shall City be liable for interest or late charges for any late payments.

3.3.4 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until the SFMTA approves the Equipment, Services, or other Deliverables for which Contractor seeks compensation until such Services, Equipment or other Deliverables satisfy the requirements of this Agreement and relevant Task Order. SFMTA shall not unreasonably withhold said approval. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including Equipment, Software components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the material requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.5 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and must include the Contract Progress Payment Authorization number. The Contractor shall submit invoices for all allowable charges incurred in the performance of each task order. No more than one invoice shall be submitted in a month. The Contractor shall submit invoices in quadruplicate with each invoice containing the following information:

- (a) Contract Number
- (b) Task Order Number
- (c) Description of the Deliverables provided for which Contractor seeks compensation
- (d) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced
- (e) Other direct costs
- (f) Subcontractor costs supported by invoice itemization in the same format as described here
- (g) Fixed Fee for current invoice period and amount of Fixed Fee as of date of invoice. Fixed Fee will be calculated as a prorated portion of the total fixed fee for the task for which Contractor seeks payment.
- (h) Total costs
- (i) SFMTA Form No. 6 – Progress Payment Report

3.3.6 Progress Payment Form. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the SFMTA Progress Payment Form. If the Progress Payment Form is not submitted with Contractor's invoice, the

Controller will notify the SFMTA and Contractor of the omission. If Contractor's failure to provide the SFMTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20 percent of the payment due pursuant to that invoice until the SFMTA Progress Payment Form is provided.

3.3.7 Reserved. (SBE Payment).

3.3.8 Getting Paid for Goods and/or Services from the City.

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

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

3.3.9 Grant-Funded Contracts.

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

(b) **Grant Terms.** The funding for this Agreement is provided to the SFMTA in full or in part by a Federal or State grant. As part of the terms of receiving the funds for this Agreement, the SFMTA must incorporate some of the terms into this Agreement (Grant Terms). The Grant Terms are set out in "FTA Contract Requirements" attached as Appendix D are incorporated into this Agreement. If there is any conflict between the Grant Terms or other FTA requirements and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

(c) As required by the Grant Terms, Contractor shall insert applicable provisions into each lower-tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

3.4 Audit and Inspection of Records.

3.4.1 Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, billing records other data related to invoices, materials and billing but shall not include payrolls, salary or personnel information whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts. Contractor is not obliged pursuant to this Article to disclose records that do not relate to aspects of its performance of this Agreement, personal information and personal identifiable information ("PI") of personnel if doing so is otherwise prohibited by law or regulation or if information at issue is privileged. The above noted records shall be kept in accordance with International Financial Reporting Standards (IFRS) or the Generally Accepted Accounting Principles (GAAP), as applicable.

3.4.2 Subject to 10 days written notice to the Contractor or such other reasonable timeframe as agreed by the parties, the City and its representatives shall have reasonable access to the Contractor's above noted records, receipts and time sheets relating to the above mentioned items pertaining to the Services, and the Contractor, at its expense, shall preserve such documents for a period of five (5) years after completion of the Services and shall retain its records in an orderly and logical fashion. The Contractor shall provide the City with the use of the Contractor's office equipment as necessary to conduct the audit, and a copy of any or all of these items noted above.

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

City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 Payment of Prevailing Wages.

3.6.1 Covered Services. The Services that Thales will perform under this Contract are not public works or construction Work as those terms are defined in San Francisco Administrative Code Chapter 6 or in the California Public Works Code. Notwithstanding that purpose and intent of the parties and the nature of the Advanced Train Control System, the Work Thales will perform under this Contract may involve the performance of trade Work covered by the provisions of San Francisco Administrative Code Section 6.22(e) [Prevailing Wages] (collectively, Covered Services). The provisions of Section 6.22(e) of the Administrative Code are incorporated as provisions of this Contract as if fully set forth herein and will apply to any Covered Services performed by Thales and its subcontractor.

3.6.2 Wage Rates. The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the Term of this Contract, are hereby incorporated as provisions of this Contract. Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement (OLSE) and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD> and <http://sfgov.org/olse/prevailing-wage>. Thales agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Thales who perform Covered Services under this Contract.

3.6.3 Subcontract Requirements. As required by Section 6.22(e)(5) of the Administrative Code, Thales shall insert in every subcontract or other arrangement, which it may make for the performance of Work, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

3.6.4 Posted Notices. As required by Section 1771.4 of the California Labor Code, Thales shall post job site notices prescribed by the California Department of Industrial Relations (DIR) at all job sites where Covered Services are to be performed.

3.6.5 Payroll Records. As required by Section 6.22(e)(6) of the Administrative Code and Section 1776 of the California Labor Code, Thales shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her

classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records relevant to Contractor's personnel who performed Covered Services shall at all times be available for inspection of and examination by the City and its authorized representatives and the DIR.

3.6.6 Certified Payrolls. While it is not Anticipated that Contractor will perform covered services, Where Contractor's or a subcontractor(s)' employee(s) does perform Covered Services, Contractor shall prepare Certified payrolls pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all such employees, including those of subcontractor, who performed labor in connection with Covered Services. Thales and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Thales shall submit payrolls to the City via the reporting System selected by the City. The DIR will specify how to submit certified payrolls to it. The City will provide basic training in the use of the reporting System at a scheduled training session. Thales and all subcontractor that will perform Covered Services must attend the training session. Thales and applicable subcontractor shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

3.6.7 Compliance Monitoring. Covered Services to be performed under this Contract are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the OLSE. Thales and any subcontractor performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code. Steps and actions include but are not limited to requirements that: (A) Thales will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Harris by the Charter and Chapter 6 of the San Francisco Administrative Code; (B) (C) Thales shall maintain a sign-in and sign-out sheet showing which employees perform covered services and are present on the job site; (D) Thales shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (E) that the Labor Standards Enforcement Officer may audit such records of Thales as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works. Failure to comply with these requirements may result

in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

3.6.8 Remedies. Should Thales, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Contract, subcontract or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Thales shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Thales and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. The City, when certifying any payment which may become due under the terms of this Contract, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture limited to amounts necessary to satisfy the order to pay back wages for Covered Services and any penalties assessed.

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond those Services listed in Appendix A, unless Appendix A is modified as provided in Section 14.5 (Modification of this Agreement).

4.2 Priority of Documents. In case of conflict between this Contract (that is, this document and its Included Appendices) and any Task Order, only as to issues of costs, scope of work, personnel assigned, warranty, liquidated damages for delay, performance bond, the Task Order shall govern.

4.3 Information and Data. The Contractor shall request in writing any information and data it will require to perform Task Orders. The Contractor shall identify the timing and priority for which this information and data will be required. The Contractor and City shall reach agreement as to the availability and delivery time for this data and information during initial task negotiations.

4.4 Presentations. In the performance of assigned tasks, the Contractor, if requested by City and reasonably required, shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.

4.5 Task Requirements. The SFMTA will define Task requirements. The cost and estimated time to perform the task fully will be agreed upon in advance of the start of Work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below.

4.5.1 Scope of Work. The SFMTA will prepare the scope of Work and expected time of completion, using the Task Order Request Form (Appendix C) and transmit the Task Order Request Form to the Contractor with a request for a proposal for the performance of the task.

4.5.2 Contractor Proposal. The Contractor shall prepare and submit a proposal for the task showing:

(a) A Work plan that includes a detailed description by subtask of the Work to be performed and the means and methods that will be used to perform it;

(b) Milestones for completion for each subtask and deliverables at each milestone;

(c) Personnel and the Subcontractor assigned to each part of the Work along with a resume or curriculum vitae that indicates why such personnel are qualified to perform the Work; and prior experience in performing Work of this nature; if not included in the original proposal;

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

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

(ii) Estimated reasonable out-of-pocket expenses;

(iii) Proposed profit.

4.5.3 Negotiation of Cost and Profit. The Project Manager will review the proposal and negotiate either a lump sum price or a fixed profit to perform the Work of each subtask and task and either a total price or a total cost not to exceed for the task.

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

4.5.5 Reserved. (Subcontracting Goals)

4.5.6 Controller Certification. The Project Manager will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

4.5.7 Notice to Proceed. After certification, the Project Manager will send to the Contractor a written NTP and task number. The Contractor shall use the task number when submitting invoices to the Project Manager for payment. The Contractor shall not commence Work on any task until it receives a written NTP for the task.

4.5.8 Changes. Agreed lump sum prices and fixed profits for subtasks and tasks cannot be modified unless there is a material change in the scope of Work of the task. If there is a material change in the scope of Work of a task, then a proposal, negotiations, and Record of Negotiations shall be required before changes to agreed lump sum prices and fixed profits can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

4.5.9 Failure to Agree on Terms of Task. In the event that the SFMTA and Contractor cannot reach agreement on the terms of the Task Order, the SFMTA may either cancel the Task Order and have the Work accomplished through other available sources or may direct the Contractor to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance.

4.6 Assigned Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor shall comply with City's reasonable requests regarding assignment and/or removal of key personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement. Contractor acknowledges that timely performance of Work is greatly dependent upon the assignment of personnel with requisite expertise and experience to supervise and perform the Work ("Key Personnel"). Such Key Personnel will be identified in each Task Order. Contractor shall not reassign Key Personnel or assign Key Personnel to other projects without advance written notice to the SFMTA and providing a competent replacement. The SFMTA will not unreasonably withhold its approval of replacement personnel.

4.7 Current Workload and Available Resources. The Contractor covenants that its current workload and the workload of its Subcontractors will not affect the commencement and the progress of Work under this Agreement. The Contractor shall have all the necessary professional, technical and support personnel, including those of the Subcontractors, available, ready and mobilized to perform the Work within two weeks of the receipt of NTP of a Task Order.

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

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

If Contractor considers certain Agency review comments or directives, either written or oral, to require Work efforts not included in the approved Program Management/Implementation Plan, the Contractor shall provide Agency with either a written request for clarification of intended Work or a proposal to proceed with Additional Work within two calendar weeks of discovering the perceived extra Work, in strict accordance with the procedures specified in subsection 4.5.2 above.

4.10 Subcontracting. Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the Work required to perform the Services. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. The City approves Thales' subcontracting of portions of the Work to its affiliate, Thales Canada.

4.11 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.11.1 Independent Contractor. For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and Work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans,

arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and Work, or any agent or employee of Contractor providing same.

Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's Work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs Work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section.

Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within ten business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency or present a plan to remedy the deficiency that is reasonably acceptable to the City. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.12 Assignment. Notwithstanding the foregoing, Thales may assign in connection with the sale of the relevant business any or all of its rights and obligations under this Agreement to a third party, subject to the prior written approval of the Director of Transportation, which shall not unreasonably be withheld. The SFMTA may not assign any or all of its rights and obligations under this Agreement unless prior authorization is granted in writing by Thales.

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

All warranties provided by Contractor in respect of any Equipment and Software supplied under this Agreement shall be as set forth in the warranty provisions applicable to the Task Order for the Services provided under that Task Order, which warranty shall have a term of not less than two years from first use in revenue service Thales shall reperform at no additional charge to the SFMTA any of the Services that it does not properly perform. Notwithstanding anything to the contrary in the Agreement, Thales's warranty obligations shall not extend to the Preventative Maintenance or other corrective action performed by the SFMTA's personnel or third parties acting on behalf of SFMTA. Except as expressly stated in this Agreement, Thales's warranty obligations shall be limited to the provisions of this Section 4.13, the Task Order for said Services, and as stated in Appendix A to this Agreement. All and any warranties, terms, conditions or representations, express or implied, oral or written, statutory or otherwise arising by operation of law are hereby expressly excluded.

4.14 Delays.

4.14.1 Delay Due to Contractor. By entering into this Agreement, Contractor agrees that in the event the Equipment, Software or services Contractor provided for under this Agreement are delayed the City will suffer actual damages that will be impractical or extremely difficult to determine. For each Task Order made under this Agreement, the Parties will mutually agree upon a key date or dates (the "Key Date(s)") in respect of the timely performance of the Services or dated milestones for portions of the Services, and a corresponding amount of liquidated damages that the Contractor shall pay to the SFMTA for each business day of delay solely and directly attributable to the Contractor beyond said Key Date(s). Said liquidated damages are not a penalty but are a reasonable estimate of the losses that City will incur based on the delay, established in light of the circumstances existing at the

time the parties executed the Task Order for the relevant equipment, software or services. The City shall subtract said amounts of liquidated damages from amounts that are due Contractor. The parties will negotiate for each Task Order the value of liquidated damages (that is, dollar amounts for each day of delay or other metric), which will be stated the Task Order. The negotiated value of liquidated damages for Contractor's delay will compensate the SFMTA for loss of business value caused by Contractor's delay (that is, the value of the benefits from the Task Order Work that SFMTA would have obtained but for Contractor's delay).

4.14.2 Delay Not Due to Contactor. In the event that the Contractor incurs additional cost or delay in the scheduled milestones or timelines due to: a) any act, omission or delay of the City with respect to its obligations under this Agreement or the relevant Task Order; or b) any circumstance not solely and directly attributable to the Contractor; or c) another contractor or subcontractor, the relevant Task Order shall be modified accordingly such that the scheduled milestones or timelines shall be extended for a period not less than the period of delay unless otherwise mutually agreed by the Parties. If the delay is attributable to the City, the City shall reimburse Contractor for all reasonable additional costs and expenses incurred by the Contractor as a result of such delay.

4.15 Bonding Requirements. Any bonding requirement shall be set forth and agreed to under the applicable Task Order.

4.16 Restoration of ATCS to Prior Operating Condition. As directed by the SFMTA, at any time during the course of Contractor's performing a Task Order, or as part of a full or partial termination of this Agreement, or if Contractor should abandon or otherwise materially breach this Agreement, Contractor shall reverse changes as agreed by the parties that Contractor has made to the ATCS and shall reasonably restore the ATCS to its operating condition and status prior to commencing a given Task Order to maintain existing ATCS functionality and safety certification. The SFMTA shall compensate Contractor for said Services on a time and materials basis. In case of Contractor's breach of its obligations under this Section 4.16, monetary compensation would be an inadequate and insufficient remedy for the loss of utility of the ATCS, and the SFMTA may therefore seek to enforce the requirements of this Section 4.16 by writ of mandamus or other legal or equitable action for affirmative relief in any court that has jurisdiction. If a problem is discovered after acceptance of the Task Order, Thales will remedy the problem under warranty.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain

in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in amounts required by California law, with Employers' Liability Limits not less than \$2,000,000 each accident, injury, or illness; and including coverage, as applicable, for U.S. Long Shore and Harbor Workers' Act benefits and Jones Act benefits, and Federal Employers Liability Act. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all Work performed by Thales, its employees, agents and subcontractors.

(b) Commercial General Liability Insurance with aggregate coverage limits not less than Twenty Million Dollars (\$20,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Explosion, Collapse, and Underground (XCU), Personal Injury, Broad form Property Damage, Products, and Completed Operations. Thales may meet this requirement with one or more primary, umbrella, and/or excess general liability insurance policies that generally cover its corporate projects and operations, provided that should a claim or claims be paid by said policy or policies that total in the aggregate more than Two Million Dollars (\$2,000,000 US), Thales shall within ten Days of receipt of such claim(s) provide notice of same to the SFMTA and obtain additional insurance so that Thales' Services under this Agreement is at all times fully covered in the amount of Twenty Million Dollars (\$20,000,000 US), as provided herein. Commercial Liability Insurance shall not exclude damages and other liability arising from failure or malfunction of the ATCS, including but not limited to damages to rail vehicles, wayside equipment and SFMTA infrastructure, and injury to persons.

(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; and

(d) Risk of Loss Coverage for Proprietary Equipment and Software insuring against loss of Proprietary Equipment and Software prior to City's acceptance, with limits not less than the replacement cost of the Proprietary Equipment and Software (including costs to install, program, configure and test).

(e) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$2,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

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

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

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

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

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

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

5.1.3 All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 14.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

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

5.1.5 Should any 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.

5.1.6 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.

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

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

5.1.9 Approval of the insurance by the City shall not relieve or decrease the extent to which Thales or subcontractor of any tier may be held responsible for payment of any and all damages resulting from its operations. Thales shall be responsible for all losses not covered by insurance, excluding damage caused by earthquake and flood (whether caused by storm or tidal wave) consistent with Section 7105 of the California Public Contract Code in excess of 5 percent of the Agreement Sum, including the deductibles. All policies of insurance and certificates are subject to review by the City and must otherwise meet the requirements of the City's Risk Manager.

5.1.10 Thales and its subcontractors shall comply with the provisions of California Labor Code Section 3700. Prior to commencing the performance of Services, Thales and all of its subcontractors shall submit to the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.

5.1.11 Liability insurance, except for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.

5.1.12 All insurance policies required by this Agreement shall be endorsed to provide for thirty (30) Days prior written notice of cancellation for any reason, intended nonrenewal, or reduction in coverage to the City. All notices shall be made to all the following:

Jonathan Wong

Contract Administrator, Contract No. SFMTA-2020-20
Finance & Technology, SFMTA
1 South Van Ness Avenue, 3rd Floor, 1058C
San Francisco, CA 94103
Jonathan.Wong@sfmta.com

David Rojas
Technical Program Manager, Contract No. SFMTA-2020-20
Finance & Technology, SFMTA
1 South Van Ness Avenue, 3rd Floor, 1019
San Francisco, CA 94103
David.Rojas@sfmta.com

Contracts & Procurement Office, Ref. Contract No. SFMTA-2020-20
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

5.1.13 Thales, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new or renewed policy at least 10 Days before the effective date of such cancellation, change or expiration, with a complete copy of new or renewed policy.

5.1.14 If, at any time during the life of this Agreement, Thales fails to maintain any item of the required insurance in full force and effect, all Services of this Agreement may, at City's sole option, be immediately suspended, and all payments due or that become due will be withheld, until notice is received by the City as provided in the immediately preceding Section 5.1.12 that such insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City.

5.1.15 Joint and Several Liability. If Thales is a joint venture partnership, the liability of each partner of the joint venture shall be joint and several. No insurance policy providing coverage under this Agreement shall contain any provision prohibiting coverage of a joint venture partnership or otherwise limiting coverage any joint venture partner.

5.1.16 Indemnitees.

(a) For general liability insurance, Thales shall include as additional insureds the City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.

(b) With the exception of professional liability insurance, Thales shall include as additional insured or exclusive loss payee on all policies the City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.

5.1.17 Insurer Qualifications. Insurance companies providing coverage for this Agreement shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-,VIII" and must otherwise be satisfactory to the City's Risk Manager.

5.2 Indemnity, Defense and Liability.

5.2.1 Obligation to Defend and Indemnify.

(a) To the fullest extent permitted by law and except as specifically provided otherwise in this Agreement, upon the City's providing notice to Thales as provided in Section 5.2.1(b) as to any claim, administrative action, or lawsuit brought by a third party against the City for any loss of or damage caused by or arising from the negligent or intentional acts of Thales or its subcontractors arising from the Services, Thales shall assume the defense of said claim, administrative action, or lawsuit, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"). Subject to the requirements and limitations in Section 5.2.1(b), said indemnification shall include any and all claims, suits, actions, losses, costs, damages, injuries (including, without limitation, injury to or death of any employee of Thales or its subcontractors), expense and liability of every kind, nature, and description (including, without limitation, direct, economic, indirect, incidental and consequential (special) damages incurred by said third parties, court costs, attorneys' fees, litigation expenses, fees of expert contractors or witnesses in litigation, and costs of investigation), that arise out of, result from, are connected with, pertain or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Thales, any of its subcontractors or Affiliates, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities") in the performance of the Services.

(b) The indemnification contained herein is subject to the City: (i) providing Thales with prompt written notice of the claim; (ii) granting Thales sole control of the defense to the claim except that Thales may not enter into any settlement that would adversely impact the City's rights or impose liability upon the City without its prior written consent; and,

(c) The terms, conditions, provisions, and failure to cover of any insurance policy covering Thales' performance under this Agreement shall not operate to limit Thales' Liabilities under this Agreement. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities.

(d) Thales assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee.

5.2.2 Limitation of Liability.

(a) The City's total liability to Thales for the Services shall be limited to the value of the Services completed in accordance with the requirements of this Agreement, said amount not to exceed the Contract Amount stated in Section 3.3, as that amount may be modified by a properly approved and executed Change Order.

(b) Except as provided herein, Thales' liability to the City under this Agreement shall be limited to the to the value of direct damages arising from Thales' breach of this Agreement or Thales' negligence in performing the Services and which shall be limited to 100% of the Task Order under which the damages are incurred. Said limitation on liability shall not apply to:

- (i) damages and other liability caused by Thales's willful, intentional acts or omissions;
- (ii) any applicable statute, City Ordinances, and Codes;
- (iii) damages to the City or to third parties that fall within the insurance coverages required under the Agreement under 5.1.1 above;
- (iv) Thales's warranty obligations under the Agreement;
- (v) damages and other liability arising under claims by third parties, including indemnity or contribution for claims brought by a third party;
- (vi) liability for violation of regulations and laws;
- (vii) damages and other liability for infringement of any intellectual property right (see Section 5.2.4, below);
- (viii) damages and losses covered by Thales' insurance (as provided in Section 5.1.1(b)).

5.2.3 Limitations on Special Damages. The City and Thales's respective liabilities to each other for special, incidental, consequential, and indirect damages are hereby limited as follows:

(a) The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Thales for any type of special, consequential, indirect or incidental damages, including but not limited to

losses of use, data, profit, revenue, income, business, anticipated savings, reputation, and more generally, any losses of an economic or financial nature, whether these may be deemed as consequential or arising directly and naturally from the incident giving rise to the claim, arising under or related to this Agreement or under any cause of action related to the subject matter of this Agreement, whether in contract, tort (including negligence), strict liability, or otherwise. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension, cancellation or recession of the Services or this Agreement, negligence or strict liability by the City, its boards and commissions, and their representatives, contractors or agents.

(b) Except as specifically provided in this Agreement, Thales, and its Affiliates, employees, officers, directors and shareholders, shall not be liable to the City for any special, consequential, indirect or incidental damages, including but not limited to losses of use, data, profit, revenue, income, business, anticipated savings, reputation, and more generally, any losses of an economic or financial nature, whether these may be deemed as consequential or arising directly and naturally from the incident giving rise to the claim arising under or related to this Agreement or under any cause of action related to the subject matter of this Agreement, whether in contract, tort (including negligence), strict liability, or otherwise. Except as provided herein, this limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension, cancellation or recession of the Services or this Agreement, negligence or strict liability by Thales. Under no circumstances shall this limit of liability (as to special damages) apply to or limit Thales's liability with respect to any of the following:

(c) damages and other liability caused by Thales's willful, intentional acts or omissions;

(d) liability (statutory damages) imposed on Thales by law, including any applicable statute, City Ordinances, and Codes;

(e) damages and other liability arising under claims by third parties for loss or damage to property or personal injuries, including death; caused by Thales' gross negligence or willful misconduct;

(f) liability for violation of environmental regulations and laws;

(g) damages and other liability for infringement of any intellectual property right (as provided in Section 5.2.4, below).

5.2.4 Indemnity for Infringement of Intellectual Property Rights.

(a) Thales shall indemnify, defend, and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City of the Proprietary Equipment or Software to be supplied in the performance of this Agreement. Thales shall at its sole expense and election, provided any such election does not result in any cost to the City arising from the claim, either: (1) indemnify the City; or (2) obtain the right to use the infringing item; or (3) modify the infringing item so that it becomes non-infringing; or (4) replace the infringing item with a non-infringing item, subject to the requirements of Section 5.2.4(d), below.

(b) Thales shall have no obligations hereunder with respect to any intellectual property infringements caused by: (1) Thales' compliance with the City's designs; (2) City's use or combination of the Software or Proprietary Equipment with products or data of the type for which the Proprietary Equipment and Software was neither designed nor intended; or (3) the modification of the Software or Proprietary Equipment without Thales' prior written consent.

(c) The provisions of this 5.2.4 shall be the City's sole remedy for infringement claims and is conditional upon City: (1) giving prompt notice in writing to Thales of any claim or proceeding being made or threatened; (2) allowing Thales to defend and settle under its responsibility any proceedings or claims through counsel chosen by Thales at Thales' own expense and (3) affording all reasonable assistance in connection therewith.

(d) Thales shall be entitled to modify or replace any infringing item so that it becomes non-infringing, or in the event that such modification or replacement is not possible using reasonable technical efforts, to replace the item concerned with a non-infringing item that meets the performance requirements relevant to the replaced item.

5.3 Not Used.

5.4 Release of Hazardous Materials. Thales acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with Thales' release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Services performed under this Agreement are expressly within the scope of the indemnity set out in this Article, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial Work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.

Article 6 Reserved. (Liabilities of the Parties)

Article 7 Payment of Taxes

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

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

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

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

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

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

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience.

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement or any Task Order, at any time the Term, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective, and the scope of the termination (that is, Task Order or entire Agreement).

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

- (a) Halting the performance of all Services under the terminated Task Order or this Agreement (as applicable) on the date(s) and in the manner specified by the SFMTA.
- (b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items for the Work terminated.
- (c) At the SFMTA’s direction, assigning to City any or all of Contractor’s right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (d) Subject to the SFMTA’s approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

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

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

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

(a) Compensation to Contractor for all Services performed through the termination date at the rates agreed upon in Appendix B, Rate Table, plus reasonable profit for those Services.

(b) Compensation for equipment in manufacturing not yet delivered, at the Task Order price;

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

(d) All unavoidable subcontractor/supplier termination fees/charges, etc.; and

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

8.1.5 The City's payment obligation under this Section shall survive termination of this Agreement or any Task Order.

8.2 Termination for Default; Remedies.

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

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

3.5	Submitting False Claims
4.12	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
12.9	Alcohol and Drug-Free Workplace
14.10	Compliance with Laws
16.1	Nondisclosure of Private, Proprietary or Confidential Information

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

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

(d) City fails to pay Contractor in accordance with the terms of this Agreement plus sixty (60) days written notice.

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

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all reasonable and necessary costs and expenses incurred by City in effecting such cure. City shall have the right to offset from any amounts due to Contractor under this Contract: (i) direct and provable

damages, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

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

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 14.

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

8.4 Rights and Duties upon Termination or Expiration.

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

- 3.3.4 Payment Limited to Satisfactory Services
- 3.3.9 (a) Grant Funded Contracts - Disallowance
- 3.4 Audit and Inspection of Records
- 3.5 Submitting False Claims
- Article 5 Insurance and Indemnity
- Article 7 Payment of Taxes
- 8.1.5 Payment Obligation
- 14.6 Dispute Resolution Procedure
- 14.7 Agreement Made in California; Venue
- 14.8 Construction
- 14.9 Entire Agreement
- 14.10 Compliance with Laws
- 14.11 Severability
- 16.1 Nondisclosure of Private, Proprietary or Confidential Information

8.4.2 Except for the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the Term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any Work in progress, completed

Work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed Work which, if this Agreement had been completed, would have been required to be furnished to City, contingent upon City's agreement to pay Thales for said Work in progress, completed Work, supplies, equipment or other materials.

Article 9 Software Licenses and Documentation

9.1 Software License.

9.1.1 The City is hereby granted a non-exclusive, non-transferable, perpetual, restricted license to use the Software purchased under this Agreement from the date of full payment for same but only for its own operation and maintenance of the ATCS supplied by the Contractor. The City has no right to grant sublicenses. Contractor warrants that it has the title to and/or authority to grant said license(s) and sublicenses(s) to the City.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, it is understood that the City receives no title or ownership rights to Software purchased under this Agreement, and all such rights shall remain with the Contractor or its suppliers.

9.1.3 The City agrees that the Software provided to it by the Contractor under this Agreement or any renewals, extensions or expansions hereof shall, as between the Parties, be treated as proprietary and a trade secret of the Contractor or its suppliers and be subject to the provisions of Section 16.1 (Nondisclosure of Private, Proprietary or Confidential Information).

9.1.4 The City shall not:

(a) make any copies of Software provided under this Agreement or parts thereof, except for archival back up purposes and when making copies as permitted herein, shall transfer to the copy/copies any copyright or proprietary legends or other marking on said Software; or

(b) use said Software for any other purpose than permitted in this Section; or

(c) translate, reverse engineer, adapt, arrange or error-correct or make any other alterations to said Software.

9.1.5 The obligations of the City under this Section shall survive the termination or expiration of this Agreement.

9.1.6 The license to use Software provided under this Agreement may contain freely available Software obtained by Contractor from a third-party source. No license fee has been paid by Contractor for the inclusion of any such freely available Software, and no license fee is charged to City for its use. City acknowledges and agrees that the third-party source provides no warranties and shall have no liability whatsoever in respect of City's possession and/or use of the freely available Software.

9.2 License of Documentation. Contractor shall supply Documentation to the City for Equipment and Software purchased under this Agreement in the format and number of copies as set out in the relevant Task Order(s). The City shall have the right to use the Documentation for the operation and maintenance of the ATCS. The City may make limited copies of the Documentation to the extent necessary to maintain one (1) archive version and as required to train its employees in the operation and maintenance of the ATCS provided always that all copyright, confidentiality or proprietary legends or other markings shall be transposed onto such permitted copies. The Documentation and all permitted copies thereof shall at all times be treated as proprietary and a trade secret of the Contractor or its suppliers and be subject to the provisions of this Agreement for Confidential Information.

Article 10 Rights In Deliverables

10.1 Any plans, layouts, designs, diagrams, blue prints, specifications, blueprints, report and other deliverables provided by Thales that are specific to the installation of the ATCS that do not reveal proprietary Thales data shall be the property of the City (the "Deliverables"). Thales may retain and use copies of said Deliverables for reference and as documentation of its experience and capabilities. If any such Deliverables created by Thales or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Thales hereby assigns all Thales's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Thales and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 11 SFMTA Responsibilities

To facilitate Contractor's provision of professional services, the SFMTA shall do the following:

11.1 Appoint Systems Manager and Contact Persons. SFMTA shall appoint a System Manager to oversee and coordinate the SFMTA's use of the Equipment and Software and an alternate, both trained on the use of the ATCS, who shall act as SFMTA's primary contact person for all communications with Contractor. All information and materials provided to

SFMTA by Contractor pursuant to this Agreement shall be sent to the attention of the Systems Manager as directed by the SFMTA. SFMTA may, by notice in writing to Contractor, substitute the System Manager with other employees as its designated representatives, for specified issues, project or problems or a particular Task Order. The Systems Manager and any delegates must speak English with sufficient competence to assist the Contractor in performing the Work under this Agreement.

11.2 Access To ATCS. SFMTA shall provide Contractor with access to and use of all information and system facilities Contractor determines are necessary for it to provide timely services pursuant to this Agreement.

11.3 Contractor Working Space. The SFMTA shall provide at its own expense, for use by the Contractor's personnel, adequate working space within a reasonable distance of the ATCS main control room or as otherwise agreed between the Parties. Such space shall provide suitable working arrangements as necessary for the services to be performed. The SFMTA shall also provide adequate facilities for storage keeping of any and all items belonging to the Contractor within a reasonable distance of the Equipment to be serviced. Contractor shall use said storage space at its own risk; SFMTA shall not be responsible for the safekeeping or loss of Contractor's property.

11.4 Service Activities. Any maintenance activity performed by the SFMTA shall be in accordance with the relevant procedures prescribed by the Contractor in the Documentation.

11.5 Logbook. The SFMTA shall keep a logbook in which all events relevant to the services shall be kept. This logbook shall be available to both Parties at all times.

11.6 Access to Tools, Documentation, Parts. The Contractor shall have the right to make use of all tools, documentation and, if applicable, spare parts which may be relevant to the services and which shall be available on the Site(s) at all times.

11.7 Copies of Software and Documentation. SFMTA shall make available to the Contractor as needed a copy of all the Software installed and related Documentation and a copy of certificates of the Software licenses provided by third-parties.

11.8 Maintenance Records. The SFMTA shall maintain in written or electronic form records of maintenance performed by the SFMTA performed by Contractor and the parts used. The SFMTA shall also manage in an adequate manner its stock of consumable items and/or spare parts to ensure the continued availability of such consumable items and/or spare parts.

Article 12 Additional Requirements Incorporated by Reference

12.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 12, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at http://www.amlegal.com/codes/client/san-francisco_ca.

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

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

12.4 Nondiscrimination Requirements.

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

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

12.5 Reserved. (Small Business Enterprise Program)

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

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

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

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

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701)) and the California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq., as applicable.

12.10 Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on

which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

12.11 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 Contractor, will be paid unless the provider received advance written approval from the City Attorney.

12.12 Consideration of Criminal History in Hiring and Employment Decisions.

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

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

Article 13 Security Sensitive Information and Critical Infrastructure Information

13.1 Security Sensitive Information . ATCS and SFMTA infrastructure design documents are Security Sensitive Information. Design Documents, Drawings, ATCS testing and performance specifications (and any other documents that the SFMTA identifies as SSI Documents) that the SFMTA provides to Thales and that Thales creates under this Contract constitute Security Sensitive Information and Critical Infrastructure Information under federal and State law. (See 49 CFR 15 and 1520.) Thales acknowledges that access to the SSI Documents by unauthorized persons or organizations would pose significant risk of grave harm to the SFMTA and public safety.

13.2 Use of SSI Documents . Thales shall use the SSI Documents only for the purposes of performing the Services under the This Agreement, and for no other purpose. Thales shall guard the SSI Documents safe and secure at all times from disclosure to unauthorized personnel and shall only allow access to the SSI Documents to persons with a "need to know" for performing the Services. When the SSI Documents are not being used to perform the Services, Thales shall keep the SSI Documents in a locked, secure area so that the SSI Documents are not physically or visually accessible to persons who are not directly involved in the preparation of Thales' Proposal for the This Agreement. When unattended, the SSI Documents must be secured in a locked container, office, or other restricted access area with access to the keys or combination limited to those with a need to know. Thales shall not copy, publish, circulate or use any of the SSI Documents for any purpose other than performing the Services under this This Agreement, without first obtaining the SFMTA's written approval to do so.

13.3 Disposal of the SSI Documents. After Final Acceptance of the Services or earlier termination of this Agreement, Thales may keep one set of the SSI Documents for its internal use only, but shall return all other sets of SSI Documents or destroy them, as follows:

SSI Documents shall be returned to:

San Francisco Municipal Transportation Agency
Information Technology
Attention: David Rojas
1 South Van Ness, 3rd floor San Francisco, CA 94103

If not returned to the SFMTA, the SSI Documents must be destroyed in a manner that ensures recovery of the information contained therein would be difficult, if not impossible. Any means approved for the destruction of national security classified material such as machine shredding, may be used to destroy the SSI Documents. If no such means is available, the SSI Documents may be destroyed by cutting or tearing them into small pieces and assimilating it with other waste material. Compact discs or other physical electronic media containing the SSI Documents shall be broken to pieces. Electronic files containing the SSI Documents or any

portion of them shall be deleted. Thales shall certify to the SFMTA in writing that the SSI Documents have been destroyed as required herein.

13.4 Liability for Failure to Secure or Misuse of the SSI Documents.

Subject to the provisions of this Agreement, Thales shall be fully liable for any and all harm and damages that may arise from unauthorized persons or entities gaining access to the SSI Documents due to or arising from Thales' failure to adhere strictly to the requirements of this Article 13. In addition to civil liability, Thales is cautioned that violation of applicable laws and regulations concerning protection and use of Security Sensitive Information may subject Thales to federal penalties.

13.5 Subcontractors.

Thales shall include the provisions of this Article 13 in any agreement with a Thales Affiliate or subcontractor that will require access to the SSI Documents, and Thales shall be responsible for its Subcontractors' and Suppliers' adherence to the requirements of this Article.

Article 14 General Provisions

14.1 Notices to the Parties.

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

To City:
David Rojas, David.Rojas@sfmta.com
Train Control, ATCS
Technical Program Manager
SFMTA
1 South Van Ness Avenue, 3rd floor, 1019
San Francisco, CA 94103
+1 415-646-2595

To Contractor:
Ray Gaffoor, Ray.Gaffoor@us.thalesgroup.com
Thales Transport & Security, Inc.
5500 Corporate Drive, Suite 500
Pittsburgh, PA 15237
+1 416 742 3900 Ext. 4015090

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

14.2 Compliance with Americans with Disabilities Act.

Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA),

including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

14.3 Incorporation of Recitals. The Recitals are incorporated into and made part of this Agreement.

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

14.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 14.1 (Notices to the Parties) regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20 percent. Contractor shall not make changes to the functions, software or performance of the ATCS without the express written approval of the SFMTA's Project Manager. As to changes in the functions, software, or performance of the ATCS, Contractor shall not rely on the verbal or written directions, waiver or agreement of any SFMTA employee other than the Project Manager or as agreed by the Parties in a fully executed modification to the Contract or Task Order.

14.6 Dispute Resolution Procedure.

14.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of all non-disputed obligations under this Agreement in accordance with the

Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

14.9 Entire Agreement. This Agreement, Task Orders (fully executed by both Parties), and any documents incorporated by reference herein constitute the entire Agreement between the Parties as to the matters addressed herein. It sets forth all intended rights and obligations and supersedes any and all previous agreements correspondence and understandings between them with respect to the subject matter hereof. In the event of any inconsistency between the provisions of any Appendix and the provisions of this document, the provisions of this document shall prevail. This Agreement may be modified only as provided in Section 14.5. Should the terms or conditions of any executed Task Order conflict with the terms or conditions of this Agreement, the terms of this Agreement shall govern. All Task Orders issued under this Agreement must be signed by the SFMTA's Director of Transportation (and approved by the SFMTA Board of Directors, as required by City law) and the President or Corporate Counsel of Contractor. Form agreements (that is, "boiler plate" purchase order forms used by either Party for the administrative processing of Services or payment invoices shall not amend this Agreement or any Task Order, and shall have no legal effect.

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

14.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid

or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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

14.13 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (“Legal Requests”) related to all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), or which in any way might reasonably require access to City’s Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored

14.14 Force Majeure.

14.14.1 Neither Party shall by reason of Force Majeure, be entitled to terminate this Agreement nor shall either Party have any claim for damages against the other for any nonperformance or delay under the Agreement as a result of such Force Majeure. If the performance in whole or part of any obligation under this Agreement is delayed because of any such event of Force Majeure for a period exceeding three (3) months, the Parties shall discuss and review in good faith the desirability and conditions of terminating this Agreement.

14.14.2 The prevented Party shall, as soon as it becomes aware of an event of Force Majeure, immediately inform the other Party of the nature and the beginning and the end of the Force Majeure circumstances preventing the performance of the Agreement.

14.15 English Required. All data, documents, descriptions, diagrams, instructions and correspondence shall be in the English language.

14.16 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 Thales, will be paid unless the provider received advance written approval from the City Attorney.

14.17 Federal Contract Requirements Procurement of goods and services under this Agreement is subject to the federal contracting requirements set out in Appendix D, which are incorporated by reference as if fully set out here. Should any provision in this Agreement or a subsequent Purchase Order issued under this Agreement conflict with applicable federal contracting requirements, the federal contracting requirements shall govern.

14.18 Signature by Counterparts This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument and either of the Parties may execute this Agreement by signing any such counterpart. Delivery may be completed by the Party concerned transmitting to the other Party an electronic (PDF) or facsimile copy of the counterpart signed by such Party. Any Party delivering any executed counterpart of this Agreement as provided herein shall confirm execution by delivering by first class mail or courier an original of such executed counterpart to the other Party.

14.19 Included Appendices. The following Appendices to this Agreement are incorporated by reference to be part of this Agreement:

- A: Scope of Services
- B: Rate Table
- C: Task Order Request Form
- D: FTA Requirements

Article 15 SFMTA Specific Terms

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

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

15.2 Delivery, Title and Risk of Loss in Shipping.

15.2.1 Contractor shall deliver all equipment and software purchased under this Agreement Free on Board (F.O.B.) Origin, in accordance with the Uniform Commercial Code to the MTA's delivery address specified in the relevant Task Order for the Equipment or Software. Contractor shall assume risk of loss until the Equipment or Software is delivered to the first carrier. The price listed in any Task Order shall include for the corresponding goods all shipping costs and insurance for loss during shipping in accordance with said F.O.B. delivery term but excludes any customs duties, import taxes or other charges which shall be borne by the City. Contractor shall select the carrier, means, and method of delivery best to ensure safe delivery. Contractor shall insure all goods shipped for the full replacement value. Title to the Equipment shall pass to the City upon payment in full of the price determined in the Task Order for said goods.

15.2.2 Title to any Software, Documentation and other confidential information or data delivered to the City under this Agreement shall remain vested solely in Contractor or its licensors. Upon delivery of goods, the City shall perform a visual and quantitative check of thereof and shall notify the Contractor in writing of any apparent defect, omission or damage. If such notice is not given within ten (10) business days, the goods shall be considered in conformity with the packing list and free from apparent defects.

Article 16 Data and Security

16.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

16.1.2 Confidential Information In the performance of Services, each Party may have access to the other Party's proprietary or confidential information, the disclosure of which to third parties may damage the owner of the proprietary or confidential information. If a Party discloses proprietary or confidential information to the other Party, such information must be held by the receiving Party in confidence and used only in performing the Agreement. Each Party shall exercise the same standard of care to protect such information as it would to reasonably and prudently protect its own proprietary or confidential information.

16.2 Reserved. (Payment Card Industry (PCI) Requirements).

16.3 Reserved. (Business Associate Agreement).

16.4 Management of City Data and Confidential Information.

16.4.1 Access to City Data. City shall at all times have access to and control of City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

16.4.2 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any Work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

16.4.3 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information, which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall, within 10 business days, purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, Work stations

that were used to process the Data or for production of the Data, and any other Work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five business days of the purge.

Article 17 MacBride Principles and Signature

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

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>Jeffrey P. Tumlin Director of Transportation</p> <p>Authorized By: Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p> <p>Board of Supervisors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Clerk of the Board</p> <p>Approved as to Form: Dennis J. Herrera City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Thales Transport & Security, Inc.</p> <hr/> <p>Alcino De Sousa 5500 Corporate Drive, Suite 500 Pittsburgh, PA 15237</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 15.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000009815</p>
--	---

n:\ptc\as2020\1000426\01458285.docx

Appendix A Scope of Services

1. Description of Services

This Agreement is intended to provide the legal and procedural framework for the provision of incremental Services, Software, and Equipment for the improvement, upgrade, operation and maintenance of the ATCS. The City shall procure same from Contractor through Task Orders negotiated by the Parties under the requirements and procedures set out in this Agreement. The Parties shall separately negotiate the scope, price, performance or delivery schedule and other terms and conditions in a Task Order that are not determined by this Agreement. The Parties anticipate that services, Software and Equipment to be procured hereunder will include, but may not be limited to the following:

- a. ATCS software functionality upgrades
- b. Integration of ATCS with surface interlocks
- c. Upgrade trains and ATCS to allow tracking and management of surface operations
- d. Analysis of system operations and recommendations for improvement
- e. Equipment and software to maintain a state of good repair
- f. Hardware/software design, implementation, and test resources to support this scope

All written Deliverables, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

2. Reports. Contractor shall submit written reports as required by a Task Order or as requested by the SFMTA concerning the status or other issue within the scope of a Task Order . Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be David Rojas, Technical Program Manager.

Appendix B

Rate Table

Labor Category	2020 Rates/hr in USD	Roles included:
Project Manager	\$314.00	General Project Manager, Project Manager
System Specialist Engineer	\$289.00	SEM, PDA, SysOps, Systems, RAM, DCS, IPD
Senior Engineer	\$244.00	Safety & Safety Assurance, Quality Assurance & Configuration, Signaling Design
Engineer	\$210.00	IVVQ, Site Deployment, Software Development, Hardware App Development Customer Services, Publications
Factory or Field Technician	\$169.00	

1. The above 2020 hourly labor rate is subject to indexation adjustment on January 2nd of every calendar year, based on changes in annual average rate from PCU54133054133020102 (Producer Price Index by Industry: Engineering Services: Other Transportation Engineering Projects, Including Mass Transit Engineering Projects, Index Dec 2009=100, Monthly, Not Seasonally Adjusted) for 3 consecutive years where the first adjustment shall start on Jan. 2nd, 2021
2. 2019 annual average rate of PCU54133054133020102 is 123.6. Adjustment to be made on Jan. 2nd, 2021 shall be based on the change between 2020 annual average rate of PCU54133054133020102 against the 2019 average of 123.6
3. Should the year after year change from above index results in a deflation (i.e. change ratio is lower than 1), the above rate shall not be adjusted for that given year
4. Should the Bureau of Labor Statistics cease to publish the above index, the parties shall meet to mutually agree on an appropriate substitute index
5. Before the end of December 2022, the parties shall meet and mutually agree whether to continue adjusting the labor rate based on the above index (or any other index subsequently agreed) or establish a new set of rates
6. The above labor rate is exclusive of Travel & Living and any material cost. Such cost should be added/assessed in addition to the above rate on a case by case basis depending on the scope of each work order
7. The above 2020 hourly labor rate is to be applied on work performed in 2020 only. Appropriate indexation adjustment shall apply on work performed in subsequent years
8. The above labor categories are non-exhaustive list of Thales job titles for the applicable Thales job grade. Labor categories/job titles may be added where applicable
9. The above rates are exclusive of all taxes

Appendix C

TASK ORDER REQUEST FORM

Contract Number: <u>Enter Contract Number</u>		Contract Title: <u>Enter Contract Title</u>	
Task Title: <u>Enter Task Title</u>		Date Initiated: <u>xx/xx/xx</u>	
Type of Request:			
<input type="checkbox"/> New Task Order- No. <u>XX</u>			
<input type="checkbox"/> Modification No. _____ (attach approved original and all modifications to date)			
Total Amount Being Requested:		<u>\$ x,xxx.xx</u>	
Total approved task to date (including all mods.):		<u>\$ _____</u>	
Total task amount including this request:		<u>\$ x,xxx.xx</u>	
Task Start Date: <u>xx/xx/xx</u>		Modification Start Date: _____	
Estimated Completion Date: <u>xx/xx/xx</u>			
Funding Source:		Proposed Task SBE Goal: N/A	
Account: _____	Fund: _____	Dept: _____	Authority: _____
Project: _____		Activity: _____	
Project Title: _____			
Work to be Performed:			

APPROVALS

Requested by: _____ **Date** _____
 Name, Title

Approved by: _____ **Date** _____
 Name, Contract Manager

Reviewed by: _____ **Date** _____
 Trinh Nguyen, Manager Contracts & Procurement, Federal

Reviewed by: _____ **Date** _____
 Virginia Harmon, Contract Compliance Office

Approved by: _____ **Date** _____
 Division Director, Title

Proposed Staff and Budget:

NAME	HOURS	LOADED RATE	LABOR COST	ODCS	TOTALS
SubTotal Services					
Profit					
Other Direct Costs (ODCs)					

Grand Total This Task: \$000,000

Notes:

Approved by Requestor:

Signature:

Date:

Appendix D

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

I. DEFINITIONS

A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

G. Government means the United States of America and any executive department or agency thereof.

H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

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

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 2 C.F.R §§ 200.318(i) and 200.333.

IV. DEBARMENT AND SUSPENSION (Contracts over \$25,000)

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Therefore, by signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the San Francisco Municipal Transportation Agency ("SFMTA"). If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR Parts 180, Subpart C and 1200, Subpart C while this offer is valid and throughout the

period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

VI. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

VII. DBE/SBE ASSURANCES

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

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

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

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

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

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

B. Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of this Agreement.

1. Publication of Data. Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

2. Federal License. In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.

3. FTA Intention. When FTA awards Federal assistance for an experimental, research or developmental Work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the Work to participants in the Work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental Work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject

data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental Work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

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

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

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

7. Application to Subcontractors. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

C. Provision of Rights to Government. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

D. Flow Down. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research Work financed in whole or in part with Federal assistance provided by FTA.

X. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public Work*)

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such Work to Work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to Work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of Work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

D. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

XI. ENERGY CONSERVATION REQUIREMENTS

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

XII. CLEAN WATER REQUIREMENTS (*applicable to all contracts in excess of \$100,000*)

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C.

§§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

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

XIII. CLEAN AIR (*applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any yea.*)

A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

XIV. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XV. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

XVI. TERMINATION FOR CONVENIENCE OF CITY (*required for all contracts in excess of \$10,000*)

See Agreement Terms and Conditions.

XVII. TERMINATION FOR DEFAULT (*required for all contracts in excess of \$10,000*)

See Agreement Terms and Conditions.

XVIII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XIX. FLY AMERICA

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

XX. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated

terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

XXI. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator)

A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations Work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support Work on the underlying contract. The Contractor agrees to carry out that Work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which Work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

XXII. NATIONAL ITS ARCHITECTURE POLICY (*Applicable to contracts for ITS projects*)

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXIII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

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

XXIV. SEAT BELT USE

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

XXV. DISPUTE RESOLUTION PROCEDURE

A. Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

XXVI. LOBBYING *(To be submitted with each bid or offer exceeding \$100,000)*

Certification required (See Appendices).

XXVII. PROMPT PAYMENT

A. In accordance with SFMTA's SBE/DBE Program, no later than three days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for Work that has been satisfactorily performed by said subcontractors. Unless the prime Contractor notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subconsultant. Within five working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the Work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

B. Contractor may withhold retention from subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within 30 days of City's payment of retention to Contractor for satisfactory completion of all Work required of a subconsultant, Contractor shall release any retention withheld to the subconsultant. Satisfactory completion shall mean when all the tasks called for in the subcontract with subconsultant have been accomplished and documented as required by City. If the Contractor does not pay its subconsultant as required under the above paragraph, it shall pay interest to the subconsultant at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.