

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Approving SFMTA Contract No. 2019-40 with the San Francisco Bicycle Coalition to provide services to support the Safe Routes to School Non-Infrastructure Project, for a contract amount not to exceed \$564,460, and for a term of two years.

SUMMARY:

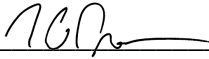

- The Safe Routes to School Non-Infrastructure Project aims to increase the number of students arriving to school by bike, transit, carpool, and on foot in support of San Francisco's Transit First policy, the SFMTA's strategic goals, and the San Francisco Unified School District's sustainability goals.
- In 2017, the Department of Public Health (DPH) applied for One Bay Area Grant (OBAG) funding for the Safe Routes to School Non-Infrastructure Project for the 2019-2021 school years.
- OBAG is a program run by the Metropolitan Transportation Commission; however, OBAG funds originate from the Federal Highway Administration (FHWA), and are administered by Caltrans, a direct recipient of FHWA funds.
- The San Francisco Bicycle Coalition (SFBC) was budgeted in the grant application to receive \$564,460 to provide technical assistance and to assist with outreach and communications.
- When Caltrans approved the grant application, it approved sole sourcing a contract for technical assistance and outreach to SFBC.
- The SFCTA ultimately transferred grant oversight of the project from DPH to the SFMTA when it approved programming of the funds.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR		September 10, 2019
SECRETARY		September 9, 2019

ASSIGNED SFMTAB CALENDAR DATE: September 17, 2019

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PURPOSE

Approving SFMTA Contract No. 2019-40 with SFBC to provide services to support the Safe Routes to School Non-Infrastructure Project, for a contract amount not to exceed \$564,460, and for a term of two years.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

The item supports the following Strategic Plan Goals:

Goal 1: Create a safer transportation experience for everyone.

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

Goal 3: Improve the quality of life and environment in San Francisco and the region.

The item supports the following Transit First Policy Principles:

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

The SFMTA is supporting San Francisco's children and families by building a coordinated framework for efforts that provide safe and effective options for school transportation. Central to this comprehensive effort is the transition from the Department of Public Health to the SFMTA on July 1, 2019 of the Safe Routes to School program in partnership with the San Francisco Unified School District (SFUSD).

The Safe Routes to School Non-Infrastructure Project (Project) aims to increase the number of students arriving to school by bike, transit, carpool, and on foot in support of San Francisco's Transit First policy, the SFMTA's strategic goals, and the SFUSD's sustainability goals.

In 2017, the San Francisco Department of Public Health (DPH) applied for funds for the Project for the 2019-2021 school years.

On March 13, 2017, the SFCTA issued a competitive call for projects for One Bay Area Grant (OBAG) Cycle 2 funds on behalf of the Metropolitan Transportation Commission (MTC). OBAG 2 funds consist of federal funding from the Federal Highway Administration (FHWA) and is administered by Caltrans. The San Francisco Department of Public Health (DPH) responded to the OBAG 2 call for projects with a grant application for the Project.

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At its July 25 and September 26, 2017, meetings, the SFCTA Board approved a total of \$39,472,736 in San Francisco's OBAG 2 funds for five projects, but deferred taking action on the \$2,813,264 proposed for DPH's Project, expressing concern over its effectiveness and the perceived lack of coordination between the Project and other school transportation programs, such as school crossing guards and capital safety improvements near schools. Subsequently, the SFCTA convened meetings with DPH, SFMTA, and the San Francisco Unified School District (SFUSD) to review the current structure of the Safe Routes to School Program and consider opportunities for improvement. Based on discussions at these meetings, on January 9, 2018, the SFCTA Board approved programming \$2,813,264 in OBAG 2 funds to the SFMTA for the Project, with the concurrence of the SFMTA, SFUSD, and DPH.

Caltrans approved the grant for the FHWA funds. When it approved the grant, Caltrans approved entering into a sole source contract with the San Francisco Bicycle Coalition (SFBC) to provide technical assistance and to assist with outreach and communications, as set forth in the grant application.

The SFMTA negotiated a sole source contract with the SFBC to organize, promote, and conduct activities and events that encourage walking, bicycling, carpooling, and riding transit among San Francisco K-12 students and families. Through this contract, the SFBC will coordinate with partners, including the SFMTA, the San Francisco Department of the Environment, DPH, SFUSD, including individual schools, as well as various additional non-profit and school community partners. Based on task orders to be issued by the SFMTA, SFBC will: develop program materials; conduct media and promotion activities; develop, implement, and evaluate programs and campaigns; and purchase incentives and print materials—all under SFMTA guidance in conjunction with project partners.

There is no Disadvantaged Business Enterprise (DBE) subcontracting participation requirement for this Contract.

STAKEHOLDER ENGAGEMENT

No public outreach was specifically conducted as part of the development of the final sole source contract between the SFMTA and the SFBC; however, the public has had the following opportunities to learn about and provide public comment on the Program:

- January 9, 2018: The San Francisco County Transportation Authority (SFCTA) Board of Commissioners approved a resolution approving programming of \$2,813,264 in San Francisco's OBAG Cycle2 Funds to the SFMTA for the Project.
- June 26, 2018: The SFMTA delivered a presentation at the SFCTA Board of Commissioners hearing, presenting a report on the transition of the Project from DPH to SFMTA.
- July 23, 2019: The SFMTA delivered a presentation at the SFCTA Board of Commissioners hearing, with updates on the transition progress and plans for the 2019-20 school year.

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- July 24, 2019: The SFMTA delivered a presentation at the SFCTA Citizen's Advisory Committee, with updates on the transition progress and plans for the 2019-20 school year.

ALTERNATIVES CONSIDERED

Due to the circumstances of the grant, in which the grant application was submitted by DPH but was issued to the SFMTA with the built-in commitment to contract with the SFBC, the SFMTA did not consider any alternatives to issuing this contract to the SFBC.

The SFMTA project team performed an analysis of the cost implications of using the SFBC as a contractor versus conducting the specified tasks in-house, estimating that the work the SFBC has committed to performing would cost City forces in the range of \$1.17 million to \$1.4 million.

FUNDING IMPACT

The term of the contract is two years for the total amount of \$564,460. The funds for this Project are from OBAG Cycle2 grant funds.

ENVIRONMENTAL REVIEW

On July 24, 2019, the SFMTA, under authority delegated by the Planning Department, determined that Contract No. 2019-40 is not 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).

On February 1, 2019, Caltrans determined that the Safe Route to School Non Infrastructure Project, including the services in Contract No. 2019-40, would qualify for a Categorical Exclusion under 23 Code of Federal Regulations (CFR) 771.117(c): activity (c)(1) and as such, is categorically excluded from the requirements to prepare an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act (NEPA).

Copies of the CEQA and NEPA determinations are on file with the Secretary to the SFMTA Board of Directors and are incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

On May 20, 2019, the Civil Service Commission approved Personal Services Contract No. 44729-18/19 for the Project.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve Contract No. 2019-40 with SFBC to provide services to support the Safe Routes to School Non-Infrastructure Project, for a contract amount not to exceed \$564,460, and for a term of two years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, In 2017, the Department of Public Health (DPH) applied for funds for the Safe Routes to School Non-Infrastructure Project (Project) for the 2019-2021 school years; and,

WHEREAS, The San Francisco Bicycle Coalition (SFBC) was budgeted in the grant application to receive \$564,460 to provide technical assistance and to assist with outreach and communications for the Project; and,

WHEREAS, As San Francisco's Congestion Management Agency, the San Francisco County Transportation Authority (SFCTA) is responsible for programming San Francisco's share of One Bay Area Grant (OBAG) Cycle 2 funds; the OBAG program is an initiative of the Metropolitan Transportation Commission (MTC); and,

WHEREAS, The SFCTA programmed OBAG funds for the Project, in part, on the condition that grant oversight of the Project be transferred to the SFMTA; and,

WHEREAS, The OBAG funds originate from the Federal Highway Administration, and are administered by the California Department of Transportation (Caltrans); and,

WHEREAS, On March 6, 2018, the SFMTA Board adopted a Resolution of Local Support for the Project, as required by MTC; and,

WHEREAS, When Caltrans approved the grant application, it also approved sole sourcing to SFBC a contract for technical assistance and outreach, as set forth in the grant application; and,

WHEREAS, There is no Disadvantaged Business Enterprise (DBE) subcontracting participation requirement for this Contract; and,

WHEREAS, On July 24, 2019, the SFMTA, under authority delegated by the Planning Department, determined that Contract No. 2019-40 is not 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); and,

WHEREAS, On February 1, 2019, Caltrans determined that the Project, including the services in Contract No. 2019-40, qualifies for a Categorical Exclusion under 23 Code of Federal Regulations (CFR) 771.117(c): activity (c)(1) and as such, there is no requirement to prepare an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act (NEPA); and,

WHEREAS, Copies of the CEQA and NEPA determinations are on file with the Secretary to the SFMTA Board of Directors and are incorporated herein by reference; now, therefore, be it,

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves SFMTA Contract No. 2019-40, with the San Francisco Bicycle Coalition to provide services to support the Safe Routes to School Non-Infrastructure Project, for a contract amount not to exceed \$564,460, and for a term of two years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 17, 2019.

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
San Francisco Bicycle Coalition
Contract No. SFMTA-2019-40**

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**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
San Francisco Bicycle Coalition
Contract No. SFMTA-2019-40 (FHWA)**

This Agreement is made as of _____, in the City and County of San Francisco (City), State of California, by and between San Francisco Bicycle Coalition (Contractor) and City, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA wishes to hire a contractor to organize, promote, and conduct activities and events that encourage walking, bicycling, carpooling and riding transit among San Francisco K-12 students and families, and will coordinate with partners including the SFMTA, the San Francisco Department of the Environment, the San Francisco Department of Public Health, the San Francisco Unified School District including individual Schools; as well as various non-profit and school community partners.

B. This Agreement was approved as a sole source procurement by the California Department of Transportation when it approved the grant application.

C. There is no Disadvantaged Business Enterprise (DBE) subcontracting participation requirement for this Agreement.

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

E. Approval for this Agreement was obtained when the Civil Service Commission approved Contract No. 44729-18/19 on 05/20/2019.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

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

1.3 “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation.

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

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

1.6 “**Confidential Information**” means confidential City information including, but not limited to, personally-identifiable information (PII), protected health information (PHI), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

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

1.8 “**Contractor**” or “**Consultant**” means San Francisco Bicycle Coalition, 1720 Market Street, San Francisco, CA 94102.

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

1.10 “**Day**” (whether or not capitalized) means a calendar day, unless otherwise indicated.

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

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

1.13 “**Effective Date**” means the date upon which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.14 “**Federal Highway Administration (FHWA)**” is an operating administration of the U.S. Department of Transportation.

1.15 “**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.

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

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

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

1.19 “**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 VIII A of the City’s Charter.

1.20 “**Services**” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the later of: (i) September 1st, 2019; or (ii) the Effective Date, and expire on December 30th, 2021, unless earlier terminated as otherwise provided herein.

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 11.5 (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 with a not-to-exceed price per subtask and task. In no event shall the amount of this Agreement exceed Five Hundred Sixty-Four Thousand, Four Hundred Sixty Dollars (\$564,460).

3.3.2 Method of Computing Compensation

(a) **Direct Labor Rates.** The direct labor rates in Appendix B (Calculation of Charges) shall be fixed at that level until the expiration of this Agreement.

(b) **Indirect Costs.** The Consultant's compensation under this Agreement will be based on and shall not exceed the combined indirect cost and salary burden rates as shown on Appendix B. The Consultant's indirect cost and salary burden rates are subject to audit in compliance with Federal requirements.

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

Requirements. All payments to Consultant under this Agreement are subject to audit and adjustment in accordance with the requirements and standards set out in the Federal Cost Requirements.

(d) Out-of-Pocket Expenses. The SFMTA will reimburse Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel and per diem expenses shall not exceed rates authorized to be paid California State employees under current rules of the State Department of Personnel Administration, and are to be pre-approved by the SFMTA. Consultant must obtain the best air fare available in a timely fashion. All travel receipts must accompany the invoice.

(e) Non-Reimbursable Expenses. Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for the services of this Agreement. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable.

(f) Use of Public Transportation. San Francisco is a transit-first city, and the SFMTA encourages Consultant and Subconsultants to use public transit, bicycling, or walking in performance of its services to the maximum extent possible. The SFMTA will closely review the Consultant's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. The City reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

3.3.3 Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month. 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. 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 Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or

detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

3.3.6 Invoice Format. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. The Consultant 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 Consultant shall submit invoices in quadruplicate with each invoice containing the following information:

- (a) Contract Number;
- (b) Task Order Number;
- (c) Description of the work performed or services rendered;
- (d) 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 Consultant seeks payment; this fee will be for a set of deliverables identified in the task order;
- (e) Total costs;
- (f) SFMTA Form No. 6 – Progress Payment Report.

3.3.7 Progress Payment Form. The Controller is not authorized to pay invoices submitted by Consultant prior to Consultant's submission of the SFMTA Progress Payment Form. If the Progress Payment Form is not submitted with Consultant's invoice, the Controller will notify the SFMTA and Consultant of the omission. If Consultant'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.

3.3.8 Reserved. (DBE Payment).

3.3.9 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.

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.

3.3.10 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) FHWA Requirements. The provisions contained in "FHWA/Caltrans Requirements For Personal Services Contracts" (Appendix D) are incorporated into this Agreement. If there is any conflict between the FHWA terms and conditions and any other terms and conditions of this Agreement, the FHWA terms and conditions shall take precedence.

3.4 Audit and Inspection of Records. 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, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

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.

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 11.5 (Modification of this Agreement).

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

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

4.4 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.

4.4.1 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 Consultant with a request for a proposal for the performance of the task.

4.4.2 Consultant Proposal. The Consultant 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 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 hours and direct salaries by position (hourly rates by position as listed in Appendix B for Consultant personnel). Labor hours for preparing monthly invoices or filling out required forms 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) Indirect Costs (% rates as listed in Appendix B) for Consultant;
 - (iii) Estimated reasonable out-of-pocket expenses;

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

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

4.4.5 Reserved. (Subcontracting Goals).

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

4.4.7 Notice to Proceed. After certification, the Project Manager will send to the Consultant a written NTP and task number. The Consultant shall use the task number when

submitting invoices to the Project Manager for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.

4.4.8 Changes. Agreed lump sum prices 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 can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

4.4.9 Failure to Agree on Terms of Task. In the event that the SFMTA and Consultant 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 Consultant to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Consultant refuse to undertake a City-ordered task.

4.5 Key Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Consultant's authorized subcontractors) to perform the Services. Consultant shall comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Consultant. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement. The Consultant agrees that the following key team members shall be committed and assigned to provide services under this Agreement to the level required by SFMTA for the term of the Agreement and shall also be staffed at the local Consultant offices within the San Francisco Bay Area for all such time:

Christopher White and Janelle Phung

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

4.6 Current Workload and Available Resources. The Consultant covenants that its current workload and the workload of its Subconsultants will not affect the commencement and the progress of the work under this Agreement. The Consultant shall have all the necessary professional, technical and support personnel, including those of the Subcontractors, available, ready and mobilized to perform actual work within two weeks of the receipt of NTP on a particular task. In addition, the Consultant shall make good faith efforts to have all contracts signed with Subcontractors within three weeks of NTP. Consultant shall provide copies of said subcontracts to the SFMTA upon request.

4.7 Transmittal of Work Product. When requested by Agency's Project Manager, and after completion of each task and subtask, the Consultant shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its Subconsultants' work on this Agreement. The Consultant'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.

4.8 Reserved. (Reproduction of Work Product).

4.9 Agency's Responsibilities Regarding Submittals. The Agency will review and comment on Consultant's submittals generally within two calendar weeks of submittal. The Agency and Consultant 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 Consultant submittals shall in no way relieve the Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Consultant of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

If Consultant 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 Consultant shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified in subsection 4.5.2 above.

4.10 Subcontracting. Contractor will not employ subcontractors.

4.11 Independent Contractor; Payment of Employment Taxes and Other Expenses²

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 five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.11.2 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. The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and

approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

Article 5 Insurance and Indemnity

5.1 Insurance.

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

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

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; policy must include Abuse and Molestation coverage.

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

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

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

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

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

5.1.5 Should any 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 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements from 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 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

5.2 Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable

to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor’s performance of this Agreement, including, but not limited to, Contractor’s use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either’s agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City’s costs of investigating any claims against the City.

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

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

5.2.1 Limitations. No insurance policy covering the Contractor’s performance under this Agreement shall operate to limit the Contractor’s Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities.

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

Article 6 Liability of the Parties

6.1 Liability of City. CITY’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (PAYMENT) OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON

CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

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

Article 7 Payment of Taxes

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

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

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

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

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

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

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

(c) At 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) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services the SFMTA has not already tendered payment. Reasonable costs may determined by reference to Exhibit B. Contractor may also recover the reasonable cost of preparing the invoice.

(b) 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.

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

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, post-termination employee salaries, post-termination administrative expenses, post-termination indirect costs, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

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

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

8.2 Termination for Default; Remedies.

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

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

3.5	Submitting False Claims.
4.13	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.9	Alcohol and Drug-Free Workplace
10.12	Working with Minors
11.10	Compliance with Laws
13.1	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) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

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

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

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

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

8.4 Rights and Duties upon Termination or Expiration.

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

- 3.3.4 Payment Limited to Satisfactory Services
- 3.3.10 Grant Funded Contracts - Disallowance
- 3.4 Audit and Inspection of Records
- 3.5 Submitting False Claims
- Article 5 Insurance and Indemnity
- 6.1 Liability of City
- 6.3 Liability for Incidental and Consequential Damages
- Article 7 Payment of Taxes
- 8.1.6 Payment Obligation
- 9.1 Ownership of Results
- 9.2 Works for Hire

11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
13.1	Nondisclosure of Private, Proprietary or Confidential Information

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

Article 9 Rights In Deliverables

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

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

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at http://www.amlegal.com/codes/client/san-francisco_ca.

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

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

10.4 Nondiscrimination Requirements

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

10.4.2 Reserved. (Nondiscrimination in the Provision of Employee Benefits).

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

10.5 Reserved. (Disadvantaged Business Enterprise Program).

10.6 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.

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

10.8 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.

10.9 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).

10.10 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.

10.11 Reserved. (Slavery Era Disclosure).

10.12 Working with Minors. In accordance with California Public Resources Code Section 5164, if Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach, Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Contractor, or any subcontractor, is providing services to the City involving the supervision or discipline of minors or where Contractor, or any subcontractor, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Contractor and any subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this section and Section 10.14 (Consideration of Criminal History in Hiring and Employment Decisions) of this Agreement, this section shall control.

10.13 Consideration of Criminal History in Hiring and Employment Decisions

10.13.1 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.

10.13.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the

City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.14 Reserved. Public Access to Nonprofit Records and Meetings.

10.15 Reserved. Food Service Waste Reduction Requirements.

10.16 Reserved. (Sugar-Sweetened Beverage Prohibition).

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

10.18 Reserved. (Preservative Treated Wood Products).

Article 11 General Provisions

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

To City: **Miriam Sorell
TDM Program Manager
One South Van Ness Avenue, 7th Floor
San Francisco, CA 64103
Miriam.sorell@sfmta.com**

To Contractor: **Brian Wiedenmeier
Executive Director
San Francisco Bicycle Coalition
1720 Market Street
San Francisco, CA 94102
brian@sfbike.org**

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

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

11.3 Reserved.

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

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

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the 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.

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

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

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

11.9 Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. All appendices to this Agreement are incorporated by reference as though fully set forth. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

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

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

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

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

Article 12 SFMTA Specific Terms

12.1 Large Vehicle Driver Safety Training Requirements.

12.1.1 Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletainingstandards. 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.

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

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 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.

13.1.2 Confidential Information. In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such

information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

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

13.3 Reserved. (Business Associate Agreement).

Article 14 MacBride Principles And Signature

14.1 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>Tom Maguire Director of Transportation (Acting)</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>San Francisco Bicycle Coalition</p> <hr/> <p>Brian Wiedenmeier Executive Director 1720 Market Street San Francisco, CA 94102</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 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000011626</p>
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Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form
- D: FHWA/Caltrans Requirements

Appendix A Scope of Services

1. Description of Services

The Contractor will organize, promote, and conduct activities and events that encourage walking, bicycling, carpooling and riding transit among San Francisco K-12 students and families, and will coordinate with partners, including the SFMTA, the San Francisco Department of the Environment, the San Francisco Department of Public Health, the San Francisco Unified School District, individual schools, and various non-profit and school community partners.

The Scope of Work is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project.

The SFMTA will issue task orders for any and all services conforming to the tasks described below.

1. Develop Program Materials

Design and produce collateral and other program materials for the Safe Routes to School (SRTS) Project.

Work may include:

- a. Developing strategic messages, program themes, slogans and logos;
- b. Designing copy and art for online materials including websites and e-mail programs;
- c. Developing integrated collateral materials that work with specific target audiences, handling copy and design development
- d. Developing materials: creating and printing fact sheets; compiling tool-kits for school/community groups, presentations, and community event materials.
 - i. Designing copy, art, and graphic design layouts for printed materials, including flyers, brochures, posters, banners, decals, letterhead and envelopes for programs;
 - ii. Designing copy, art, and graphic design layouts for promotional items such as magnets, buttons, T-shirts, caps, mugs and pencils for programs;
 - iii. Providing all campaign and other media in a variety of electronic formats (e.g., JPEG, GIF, TIF);
- e. Preparing materials for printing and/or coordinating printing, including billing

2. Media and Promotion Activities

Provide content regarding SRTS activities and resources to post online and in print media.

Work may include:

- a. Drafting website content updates.
- b. Drafting posts and articles for online promotional opportunities such as Facebook, Twitter, and/or social media sites, as well as for newsletters, email lists, blog posts, and other such channels.

- c. Providing photographs of SRTS activities to accompany posts, including documentation of required attribution and, as needed, securing permission to post photographs of members of the public including minors.
- d. As needed, coordinating and implementing media buys to promote SRTS opportunities.

3. **Program Development, Implementation, and Evaluation**

Develop and implement new tactics for promoting mode shift and safe behaviors; develop how-tos, posters, email drafts, and other materials. Develop evaluation approach. Work may include:

- a. School Outreach
 - 1. Direct engagement with school communities to educate volunteers on resources and toolkits, and/or to develop and implement events/activities.
- b. Multi-cultural Outreach
 - 1. Ensure outreach activities include culturally competent communications, including the development of multicultural campaign materials and knowledgeable outreach to a broad array of communities.
- c. Event Coordination
 - 1. Arrange logistics related to producing major events (such as “Walk and Roll 2 School Day” and weekend trainings) – find space, develop posters, secure staffing, identify partners and volunteers, promote through media and public figures.
 - 2. Collect information needed to evaluate event effectiveness.
- d. Design and implementation of new programs and activities
 - 1. Work with SRTS team to identify needed programming and document recommended approaches, including evaluation needs.
 - 2. Produce related materials.
 - 3. Schedule activities/events and organize volunteers and staff.
- e. Activity Evaluation
 - 1. Ensure activities developed and implemented include evaluation in keeping with SRTS goals; implement data collection or administer surveys identified for specific SRTS activities.
 - 2. Enter information into digital formats for data collected through various methods, including observations, surveys, and sign-up sheets.
- f. Conducting Trainings on SRTS Topics
 - 1. Develop and implement training modules, such as how to implement SRTS tactics.

4. **General Staff Participation**

Participate in routine staff activities.

- a. Attend recurring SRTS program meetings.

- b. Conduct general activities relating to staffing and staff supervision, including check-ins and meetings.
- c. Train staff on program responsibilities and activities.

5. Purchasing

Perform purchasing activities as required.

- a. Conduct labor associated with purchasing, including researching and ordering materials, researching event space and equipment rentals, and researching media buy options.
- b. Purchase materials, including, but not limited to, incentives, print materials, and equipment; rent event space; place media buys. If applicable, receive shipments.

6. Reporting

Provide monthly documentation of Contract activities.

- a. May include detailed documentation of hours spent on specific activities, to be included in evaluation of resource-effectiveness of SRTS activities

**Appendix B
Calculation of Charges**

I

Job Title	Total Hours (estimate)	Base Rate	Indirect Cost Rate	Burdened Rate	Total Labor Cost
Lead Outreach Staff	4160	\$ 52.46	0.15	\$ 60.33	\$ 250,969
Outreach Staff 2	4160	\$ 46.53	0.15	\$ 53.51	\$ 222,600
Program Director	410	\$ 80.00	0.15	\$ 92.00	\$ 37,720
Communications Coordinator	180	\$ 50.00	0.15	\$ 57.50	\$ 10,350
Operations Manager	75	\$ 67.73	0.15	\$ 77.89	\$ 5,842
Graphic Designer	70	\$ 46.53	0.15	\$ 53.51	\$ 3,746
Executive Director	20	\$108.00	0.15	\$ 124.20	\$ 2,484
					\$ 533,710

Total Labor	\$ 533,710
Total Reimbursable Expenses	\$ 30,750
Total Contract Price	\$ 564,460

Requested by:	Name, Title	Date	
Reviewed by:	Trinh Nguyen, Manager Contracts & Procurement - Federal	Date	
Reviewed by:	Virginia Harmon, Contract Compliance Office	Date	
Approved by:	Name, Director of XXXXX	Date	

Proposed Staff and Budget:					
NAME	HOURS	LOADED RATE	LABOR COST	ODCS	TOTALS
SubTotal Services					
Other Direct Costs (ODCs)					
Grand Total This Task:				\$000,000	
Notes:					
Approved by Requestor:					
Signature:				Date:	

Appendix D

FHWA/CALTRANS REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

I. DEFINITIONS

- A. **City.** The City and County of San Francisco, a municipal corporation.
- B. **Contractor or Consultant** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FHWA.
- C. **California Department of Transportation (Caltrans)** is an agency of the State of California and a direct recipient of grant funds from FHWA.
- D. **Federal Highway Administration (FHWA)** is an operating administration of the U.S. DOT.
- E. **Government** means the United States of America and any executive department or agency thereof.
- F. **Project** means the task or set of tasks listed as described in the grant application and grant agreement between Caltrans and the Subrecipient.
- G. **Subrecipient** means the San Francisco Municipal Transportation Agency, an agency of the City and County of San Francisco, which receives Federal assistance through Caltrans.
- H. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- I. **Third Party Contract** means a contract or purchase order awarded by the Subrecipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FHWA.
- J. **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 FHWA.
- K. **U.S. DOT** or **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 U.S. DOT and FHWA regulations, policies, procedures and directives, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

III. COST PRINCIPLES

- A. Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., and 2 CFR Part 200, as applicable, shall be used to determine the cost allowability of individual items.
- B. Contractor agrees to comply with federal procedures in accordance with 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards).
- C. Any costs for which payment has been made to a Contractor that are determined by subsequent audit to be unallowable under 2 CFR Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Contractor to City.
- D. All reimbursements to Contractor will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

IV. TRAVEL AND PER DIEM PAYMENTS

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

V. ACCOUNTING SYSTEM

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

VI. SAFETY

- A. Consultant shall comply with California OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by SFMTA's Safety Officer and other SFMTA representatives.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

VII. ACCESS TO RECORDS

- A. The Contractor agrees to provide the City, the FHWA Administrator, Caltrans, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor that 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 five 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 FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

VIII. DEBARMENT AND SUSPENSION

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." Contractor 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.

IX. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor; to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or violation of this warranty, the SFMTA shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

X. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

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.

The Contractor agrees to include the above clause in each subcontract financed in whole or in

part with Federal assistance provided by FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XI. CIVIL RIGHTS -- FEDERAL

- 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 FHWA may issue.
- B. **Contract Assurance.** The Contractor and its subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or its subcontractors to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.
- C. **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 FHWA 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 FHWA 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 FHWA may issue.

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

XII. CIVIL RIGHTS – STATE

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

XIII. 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 FHWA-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 FHWA 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 FHWA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XIV. 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.

XV. INCORPORATION OF FHWA TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FHWA-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 FHWA terms and conditions.