

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.2**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Sustainable Streets

**BRIEF DESCRIPTION:**

Approving Amendment No. 5 to SFMTA Contract No. 2016-03-1, with Fehr & Peers for As-Needed Environmental & Transportation Analysis & Documentation, and Amendment No. 3 to SFMTA Contract No. 2016-03-2, with Kittelson and Associates, Inc. for As-Needed Environmental & Transportation Analysis & Documentation, to exercise options to extend for one year the term of each contract, and increase the value of each contract by \$2,400,000, for a total contract amount for each contract not to exceed \$5,197,767.



**SUMMARY:**

- SFMTA requires assistance from qualified consultants to deliver SFMTA projects necessary to meet the goals and objectives of Vision Zero, MUNI Forward, and the Transit First Policy, and Complete Streets Policy, and the SFMTA's Strategic Plan.
- The SFMTA Board awarded SFMTA Contract No. 2016-03-1 to Fehr & Peers and SFMTA Contract No. 2016-03-2 to Kittelson & Associates in 2016, each for an amount of \$2,797,767 and a term of two years.
- The two consultant firms each provide the Sustainable Streets Division with environmental analysis and documentation services, transportation analysis and engineering services, and transportation data collection and analytics. That work includes proposing and evaluating physical design improvements for street and parking projects, recommending traffic improvements, and performing surveys, counts, and research.
- A one-year term extension and \$2,400,000 increase to each of the contracts is required for the consultants to provide the Sustainable Streets Division necessary the environmental analyses and engineering services described above
- The SFMTA plans to issue a new Request for Proposals by October 31, 2020 to competitively re-procure these consultant as-needed services.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract No. 2016-03-1 with Fehr & Peers
3. Contract No. 2016-03-2 with Kittelson & Associates, Inc.

**APPROVALS:**

	<b>DATE</b>
DIRECTOR 	June 11, 2020
SECRETARY 	June 10, 2020

**ASSIGNED SFMTAB CALENDAR DATE:** June 2, 2020

## **PURPOSE**

Approving Amendment No. 5 to SFMTA Contract No. 2016-03-1, with Fehr & Peers for As-Needed Environmental & Transportation Analysis & Documentation, and Amendment No. 3 to SFMTA Contract No. 2016-03-2, with Kittelson and Associates, Inc. for As-Needed Environmental & Transportation Analysis & Documentation, to exercise options to extend for one year the term of each contract, and increase the value of each contract \$2,400,000, for a total contract amount for each contract not to exceed \$5,197,767.

## **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

The SFMTA will further the following goal of the Strategic Plan through execution of the Contract.

Goal 1: Create a safer transportation experience for everyone.

Objective 1.1: Achieve Vision Zero by eliminating all traffic deaths.

Objective 1.2: Improve the safety of the transit system.

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

Objective 2.1: Improve transit service.

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

Objective 2.3: Manage congestion and parking demand to support the Transit First Policy.

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

Objective 3.1: Use agency programs and policies to advance San Francisco's commitment to equity.

Objective 3.2: Advance policies and decisions in support of sustainable transportation and land use principles.

Objective 3.3: Guide emerging mobility services so that they are consistent with sustainable transportation principles.

Objective 3.4: Provide environmental stewardship to improve air quality, enhance resource efficiency, and address climate change.

Objective 3.5: Achieve financial stability for the agency

## **DESCRIPTION**

The SFMTA's Sustainable Streets Division provides multi-modal transportation planning, engineering and operational improvements to San Francisco's transportation system to support

sustainable community and economic development. The Division closely coordinates the planning, design, engineering and construction of roadway improvements, including transit, bicycle, pedestrian, motor vehicle, parking and taxi facilities, to meet the goals and objectives of Vision Zero, MUNI Forward, the Transit First Policy and the Complete Streets policy.

The Division requires the assistance of consultants to perform environmental analysis and documentation services, transportation analysis and engineering services, and transportation data collection and analytics. That work includes proposing and evaluating physical design improvements for street and parking projects, recommending traffic improvements, and performing surveys, counts, and research.

In the fall of 2015, SFMTA advertised RFP #SFMTA 2016-03 (Local), RFP #SFMTA 2016-11 (FHWA) and RFP #SFMTA 2016-12 (FTA) soliciting proposals from firms with expertise in environmental review, transportation engineering, planning, and research to provide as-needed services in all three of the following topic areas:

1. Environmental analysis and documentation services (CEQA and NEPA);
2. Transportation analysis and engineering services; and
3. Transportation data collection and analytics.

The Agency selected Fehr & Peers and Kittelson & Associates, Inc. The SFMTA awarded a contract to each firm in May 2016, each for a term of two years, with three options to renew, with a final expiration date of May 2021. The contracts also included a Local Business Entity (LBE) participation goal of 25%. Currently, Fehr & Peers have a participation rate of 29% and Kittelson & Associates, Inc. has a participation rate of 15%.

The Agency's need for the consultants' services under the local contracts has been greater than initially anticipated, so additional funds are required for the Agency to continue to receive services. Along with these local funded contracts, there are also counterpart contracts with these consultants for the same scope of work where federal funding is involved. Upon inception of the contract set, there was an expectation that the contracts using federal funding would be utilized more. Demand has also been driven by the Division's continuing and increasing focus on the Vision Zero program and the recognition by project managers of the efficiency of the contract for accomplishing smaller scale projects. Projects funded by these contracts include data collection (traffic counts, rider surveys, curb occupancy studies, residential parking permit reform study), bicycle rack outreach and siting, bicycle crash analysis, feasibility studies, design and traffic analysis.

## **STAKEHOLDER ENGAGEMENT**

No outreach was necessary for the extension of these contracts. However, the International Federation of Professional and Technical Engineers, Local 21 was notified on January 8, 2020 as part of the approval process by the Department of Human Resources (DHR) for the contract value increase. Additionally, the Division will conduct public outreach as appropriate for work performed under each Task Order issued to the consultants.

## **ALTERNATIVES CONSIDERED**

The alternative to this action is to use only SFMTA personnel, which would limit the number of projects the Agency may implement and prolong projects' completion.

## **FUNDING IMPACT**

Under these contracts, on-call task orders are funded with State and local sources, such as Proposition K sales taxes and grants. There is no funding attached to the contracts themselves. Task order proposals are reviewed by the appropriate subdivision head and funding source information is then provided upon their approval for issuance.

## **ENVIRONMENTAL REVIEW**

On March 26, 2020, the SFMTA, under authority delegated by the Planning Department, determined that the Contract is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The Department of Human Resources approved as the amendments are less than 50% of the original contract amounts.

The City Attorney has reviewed this report. No further approvals are required.

## **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors approve Amendment No. 5 to SFMTA Contract No. 2016-03-1, with Fehr & Peers for As-Needed Environmental & Transportation Analysis & Documentation, and Amendment No. 3 to SFMTA Contract No. 2016-03-2, with Kittelson and Associates, Inc. for As-Needed Environmental & Transportation Analysis & Documentation, to exercise options to extend for one year the term of each contract, and increase the value of each contract \$2,400,000, for a total contract amount for each contract not to exceed \$5,197,767.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The SFMTA requires assistance from qualified consultants to deliver SFMTA projects necessary to meet the goals and objectives of Vision Zero, MUNI Forward, and the Transit First Policy, and Complete Streets Policy, and the SFMTA's Strategic Plan; and,

WHEREAS, The SFMTA awarded Contract No. 2016-03-1 to Fehr & Peers on May 20, 2016 for an amount of \$2,797,767 and a term of two years, and the SFMTA has amended that contract 5 times and increases the contract amount \$2,400,000 and to exercise option to extend the term one year; and,

WHEREAS, SFMTA awarded for SFMTA awarded Contract No. 2016-03-2 to Kittelson and Associates on May 20, 2016 for an amount of \$2,797,767 and a term of two years, and the SFMTA has amended that contract 3 times and increase the contract amount \$2,400,000 and to exercise option to extend the term one year; and,

WHEREAS, The consultants provide the SFMTA's Sustainable Streets Division with environmental analysis and documentation services, transportation analysis and engineering services, and transportation data collection and analytics, including proposing and evaluating physical design improvements for street and parking projects, recommending traffic improvements, and performing surveys, counts, and research; and,

WHEREAS, A term extension of one year and an increase of \$2,400,000 to each of the contracts is necessary to continue to provide the division with environmental analysis and documentation services, transportation analysis and engineering services, and transportation data collection and analytics, including proposing and evaluating physical design improvements for complete street projects and parking projects, recommendations to improve traffic circulation and reduce conflict between transportation modes, surveys, counts, and research; and,

WHEREAS, The SFMTA will issue a new Request for Proposals to competitively re-procure consultant as-needed services for Sustainable Streets Division programs; and,

WHEREAS, On March 26, 2020, the SFMTA, under authority delegated by the Planning Department, determined that the modifications to SFMTA contracts 2016-03-1 and 2016-03-2 is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves Amendment No. 5 to SFMTA Contract No. 2016-03-1, with Fehr & Peers for As-Needed Environmental & Transportation Analysis & Documentation, and Amendment No. 3 to SFMTA Contract No. 2016-03-2, with Kittelson and Associates, Inc. for As-Needed Environmental & Transportation Analysis & Documentation, to exercise options to extend for one year the term of each contract, and increase the value of each contract \$2,400,000, for a total contract amount for each contract not to exceed \$5,197,767.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 2, 2020.

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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., 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Fifth Amendment**

**Contract No. SFMTA-2016-03/1 (LOCAL)**

THIS FIFTH AMENDMENT (Amendment) is made as of \_\_\_\_\_, in San Francisco, California, by and between **Fehr and Peers Associates** (Contractor), and the City and County of San Francisco, a municipal corporation (City), acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

- A. City and Contractor have entered into the Agreement (as defined below).
- B. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein, to exercise the SFMTA's third option to extend the term by one year as authorized in Article 2 of the Agreement; increase the contract amount by \$2,400,000 for a modified contract amount of \$5,197,767 to compensate Contractor for additional services it will provide during the term extension; and update standard contractual clauses.
- C. The Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals issued October 14, 2015, and this Amendment is consistent with the process.
- D. Approval for this Amendment was obtained when the Department of Human Resources approved the modification of Contract number 42016-15/16 on March 6, 2020.

NOW, THEREFORE, Contractor and the City agree as follows:

**Definitions**

The following definitions shall apply to this Amendment:

**Agreement.** The term "Agreement" shall mean the Agreement dated May 20, 2016, between Contractor and City, as amended by the:

First Amendment, dated November 2, 2016,

Second Amendment, dated May 20, 2017,

Third Amendment, dated May 20, 2018,

Fourth Amendment, dated March 31, 2019, and this Fifth Amendment.

**Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

### **Modifications to the Agreement**

The Agreement is modified as follows:

A new Section 1.29 (Confidential Information) is added to the Agreement to read as follows:

**1.29 “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).

Article 2 (Term of the Agreement) of the Agreement is amended to exercise the SFMTA’s third option to extend the term one additional year; Article 2 is replaced in its entirety to read as follows:

The term of this Agreement shall commence on the latter of: (i) May 20, 2016; or (ii) the Effective Date and expire on May 19, 2021, unless earlier terminated as otherwise provided herein.

Section 3.3.1 (Payment Amount) of the Agreement is amended to increase the Contract Amount by \$2,400,000; Section 3.3.1 replaced in its entirety to read as follows:

**3.3.1 Payment Amount.** Compensation under this Agreement shall be based on a negotiated lump sum price per task or subtask. In no event shall the amount of this Agreement exceed Five Million, One Hundred and Ninety-Seven Thousand, Seven Hundred and Sixty-Seven Dollars (\$5,197,767).

Section 4.13 (Assignment) of the Agreement is replaced in its entirety to read as follows:



**4.13 Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an “Assignment”) unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City’s approval of any such Assignment is subject to the Contractor demonstrating to City’s reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor’s obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

A new Section 7.3 (Withholding) is added to the Agreement to read as follows:

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

Section 10.11 (Limitations on Contributions) of the Agreement is replaced in its entirety to read as follows:

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee

controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

A new Section 11.14 (Management of Private, Proprietary or Confidential Information and City Data) is added to the Agreement to read as follows:

**11.14 Management of Private, Proprietary or Confidential Information and City Data.**

**11.14.1 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.

**11.14.2 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.

**11.14.3 Access to City Data.** City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (City Data or Data), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

**11.14.4 Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data

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

**11.14.5 Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five business days of the purge.

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

### **Effective Date**

Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

### **Legal Effect**

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect. IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above. **ITY**

**San Francisco  
Municipal Transportation Agency**

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Jeffrey P. Tumlin  
Director of Transportation

Authorized By:

Municipal Transportation Agency Board of Directors

Resolution No: \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_

Roberta Boomer, Secretary

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_

Robert K. Stone  
Deputy City Attorney

**CONTRACTOR**

**Fehr & Peers Associates**

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Eric Womeldorff  
Principal  
332 Pine Street, 4th Floor  
San Francisco, CA 94104

City Supplier number: 0000020265

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

**Third Amendment**

**Contract No. SFMTA-2016-03/2 (LOCAL)**

THIS AMENDMENT (Amendment) is made as of \_\_\_\_\_, in San Francisco, California, by and between **Kittelson & Associates, Inc.** (Contractor), and the City and County of San Francisco, a municipal corporation (City), acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

- E. City and Contractor have entered into the Agreement (as defined below).
- F. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to exercise the SFMTA's third option to extend the term by one year, as authorized in Article 2 of the Agreement; increase the contract amount by \$2,400,000 for a modified contract amount of \$5,197,767 to compensate Contractor for additional services it will provide during the term extension; and update standard contractual clauses.
- G. The Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals issued October 14, 2015, and this Amendment is consistent with the process.
- H. Approval for this Amendment was obtained when the Department of Human Resources approved the modification of Contract number 42016-15/16 on March 6, 2020.

NOW, THEREFORE, Contractor and the City agree as follows:

**Definitions**

The following definitions shall apply to this Amendment:

**Agreement.** The term "Agreement" shall mean the Agreement dated May 20, 2016, between Contractor and City, as amended by the:

First Amendment, dated April 19, 2018,

Second Amendment, dated April 8, 2019, and this Third Amendment.

**Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

### **Modifications to the Agreement**

The Agreement is modified as follows:

A new Section 1.29 (Confidential Information) is added to the Agreement to read as follows:

**1.29 “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).

1.1 Article 2 (Term of the Agreement) of the Agreement is amended to exercise the SFMTA’s third option to extend the term one additional year; Article 2 is replaced in its entirety to read as follows:

The term of this Agreement shall commence on May 20, 2016 and expire on May 19, 2021, unless earlier terminated as otherwise provided herein.

1.2 Section 3.3.1 (Payment Amount) of the Agreement is amended to increase the Contract Amount by \$699,442; Section 3.3.1 replaced in its entirety to read as follows:

**3.3.1 Payment Amount.** Compensation under this Agreement shall be based on a negotiated lump sum price per task or subtask. In no event shall the amount of this Agreement exceed Five Million, One Hundred and Ninety-Seven Thousand, Seven Hundred and Sixty-Seven Dollars (\$5,197,767).

Section 4.13 (Assignment) of the Agreement is replaced in its entirety to read as follows:

**4.13 Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an “Assignment”) unless first approved by City by written instrument executed and approved in the same manner as this Agreement

in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

A new Section 7.3 (Withholding) is added to the Agreement to read as follows:

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

Section 10.11 (Limitations on Contributions) of the Agreement is replaced in its entirety to read as follows:

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

A new Section 11.14 (Management of Private, Proprietary or Confidential Information and City Data) is added to the Agreement to read as follows:

**11.14 Management of Private, Proprietary or Confidential Information and City Data.**

**11.14.1 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.

**11.14.2 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.

**11.14.3 Access to City Data.** City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (City Data or Data), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

**11.14.4 Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive

license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

**11.14.5 Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five business days of the purge.

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

#### **Effective Date**

Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

#### **Legal Effect**

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

<b>CITY</b>	<b>CONTRACTOR</b>
<b>San Francisco Municipal Transportation Agency</b>	<b>Kittelson &amp; Associates, Inc.</b>
_____ Jeffrey P. Tumlin Director of Transportation	_____ Tim Erney Principal 155 Grand Avenue, Suite 900 Oakland, CA 94612
Authorized By:  Municipal Transportation Agency Board of Directors	City Supplier number: 0000016858
Resolution No: _____	
Adopted: _____	
Attest: _____ Roberta Boomer, Secretary	
Approved as to Form:  Dennis J. Herrera City Attorney	
By: _____ Robert K. Stone Deputy City Attorney	

