

THIS PRINT COVERS CALENDAR ITEM NO.: 11

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Streets

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Contract No. SFMTA-2023-24 with Nomad Transit, LLC to develop, launch, market, operate, manage, and maintain a turnkey community based on-demand shuttle service for the Bayview-Hunters Point neighborhood as part of the “Our Community, Our Shuttle: Bayview-Hunters Point Equitable Mobility” Program for a total amount not to exceed \$4,341,992 and an initial term expiring March 15, 2026, with two one-year options to extend for up to an additional two years.

SUMMARY:

- The SFMTA will launch the Bayview Community Shuttle (Pilot Project), one of four elements of the “Our Community, Our Shuttle: Bayview-Hunters Point Equitable Mobility” Program, to provide on-demand shuttle service for the community starting in 2024 and will operate the service through March 15, 2026.
- The Pilot Project responds to stakeholder requests for the service identified from the 2018 San Francisco County Transportation Authority (SFCTA) District 10 Mobility Management Study and the 2020 SFMTA Bayview Community-Based Transportation Plan.
- In response to a request for proposals to identify qualified transportation service operators to develop, launch, market, operate, manage, and maintain a turnkey community based on-demand shuttle service for the Bayview-Hunters Point neighborhood released on August 16, 2023, a selection panel reviewed proposals, interviewed firms, and ranked Nomad Transit, LLC as the highest-ranking proposer.
- The California Air Resources Board (CARB) will fund the Pilot Project.

ENCLOSURES:

1. SFMTAB Resolution
2. SFMTA Contract No. 2023-24 with Nomad Transit, LLC

APPROVALS:

| | DATE |
|---|----------------------|
| DIRECTOR <u> <i>Viktoriya Wise</i> </u> | <u>June 12, 2024</u> |
| SECRETARY <u> <i>[Signature]</i> </u> | <u>June 12, 2024</u> |

ASSIGNED SFMTAB CALENDAR DATE: June 18, 2024

PURPOSE

Authorizing the Director of Transportation to execute Contract No. SFMTA-2023-24 with Nomad Transit, LLC to develop, launch, market, operate, manage, and maintain a turnkey community based on-demand shuttle service for the Bayview-Hunters Point neighborhood as part of the “Our Community, Our Shuttle: Bayview-Hunters Point Equitable Mobility” Program for a total amount not to exceed \$4,341,992 and an initial term expiring March 15, 2026, with two one-year options to extend for up to an additional two years.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action supports the following SFMTA Strategic Plan Goals and Objectives:

- Goal 1: Identify and reduce disproportionate outcomes and resolve past harm towards marginalized communities.
- Goal 4: Make Streets safe for everyone.
- Goal 5: Deliver reliable and equitable transportation services.
- Goal 6: Eliminate pollution and greenhouse gas emissions by increasing use of transit, walking and bicycling.
- Goal 7: Build stronger relationships with stakeholders.
- Goal 8: Deliver quality projects on-time and on-budget.
- Goal 10: Position the agency for financial success.

This action also supports the City’s Transit First Policy with the following principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
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.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
4. Transit-priority improvements, such as designated transit lanes and streets and improved signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.
5. Pedestrian areas shall be enhanced wherever possible to improve the safety and comfort of pedestrians and to encourage travel by foot.
9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.
10. The City and County shall encourage innovative solutions to meet public

transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

The “Our Community, Our Shuttle: Bayview-Hunters Point Equitable Mobility” Program is a grant-funded program to bring community shuttle service, workforce development, transportation resources, and community oversight to the Bayview-Hunters Point community.

The Bayview Community Shuttle (Pilot Project), one of four elements of the larger Program, is a Pilot Project that will operate a dynamic shuttle, providing rides anywhere within the Bayview-Hunters Point neighborhood and potentially to select destinations outside of the area such as the 24th Street BART (Bay Area Rapid Transit) Station and San Francisco General Hospital.

The proposed community shuttle will provide direct access for residents to key destinations, such as the 3rd Street commercial corridor, and supplement existing Muni service such as the T-Third and the 15 Bayview Hunters Point Express. The community shuttle will also provide a viable mobility option for current and future manufacturing and industrial jobs located in the Bayview.

The desire for a community shuttle is long-standing in the Bayview community, which has been isolated from the rest of San Francisco and suffered from decades of underinvestment. The shuttle recommendation was one of the highest priorities identified by the Bayview community during outreach of the Bayview Community Based Transportation Plan, which was approved by the SFMTA Board of Directors in February 2020. Previous shuttle services in the area, such as the Bayview Moves program in 2016, saw high popularity but ceased operations due to a lack of long-term funding and other challenges. This renewed effort for a shuttle funded by the CARB grant is a near term solution to a service need. If the pilot is deemed successful, this could leverage future funding.

Rides on the shuttle can be reserved either through a cellphone app or a tri-lingual call center. Shuttle fares will be integrated into the Clipper Card and Muni fare systems for a seamless transportation experience. The Pilot Project includes a community-driven outreach process to build a shuttle service plan that directly meets community travel needs. Potential service parameters discussed with stakeholders includes service that would operate multiple zero emission vehicles up to seven days a week and up to 12 hours a day. The average wait time for a shuttle is targeted to be under fifteen minutes for the ride to arrive, and there would be an average walk distance of one- to two- blocks to meet a ride. The vehicles must also accommodate riders of all ages, abilities, and purposes and provide door to door service to riders who may require extra assistance.

The shuttle service software would group the rides to maximize shuttle ridership and route efficiency. Shuttles picking up riders would stop at existing parking or loading spaces along the curb and would not be permitted to use Muni stops.

Data collected would include pick-up and drop-off locations (to the nearest intersection), wait times for shuttle arrival, distance traveled to meet the shuttle, vehicle occupancy, and vehicle charging hours. The collected data will provide SFMTA with the opportunity to continuously improve shuttle service and potentially make adjustments to adjacent Muni fixed route service.

The service plan will be finalized through a collaborative process between the selected vendor, the community, and the SFMTA. Service is expected to start in Fall 2024 and will operate through March 15, 2026 as specified in the CARB grant terms.

The Pilot Program's goals are:

- **Improve Community Mobility:** Connect residents to critical destinations, especially those most geographically isolated or those most vulnerable to transportation challenges.
- **Improve Community Health & Reduce Emissions:** Reduce automobile reliance and emissions in a community with a long history of emissions-based chronic health conditions. Reduce stress through more mobility options that fit trip needs. Support city-adopted Climate Action goals.
- **Invest in the Community and Create Jobs:** Create sustainable opportunities for employment and wealth-building to complement transportation solutions.
- **Connect Residents to Transportation Solutions:** Increase resident awareness of all the transportation services available to them and increase enrollment in free or reduced-cost Muni pass programs.
- **Support and Supplement Existing Transit Services:** Use the community shuttle to supplement existing Muni service, never to replace it. Use ridership data from the community shuttle to improve Muni effectiveness in the future.
- **Build Community Relationships & Ensure Community Control:** Maintaining trust with the community is critical. The program team will hold regular meetings in Bayview-Hunters Point to encourage resident participation, to demonstrate transparency, and to ensure accountability.

The Bayview Shuttle program also includes:

- A workforce development program to recruit, train, and hire Bayview residents as drivers for the shuttle. Participants will earn union-equivalent wages and benefits, with a path to employment as a Muni operator.
- A Transportation Resource Center storefront on 3rd Street where residents can get connected with transportation information and services.
- A Community Congress to provide community-driven oversight of program progress and delivery

The SFMTA issued a Request for Proposals (RFP) to identify qualified transportation service operators to develop, launch, market, operate, manage, and maintain a turnkey community based on-demand shuttle service for the Bayview-Hunters Point community on August 16, 2023. The SFMTA received proposals on October 10, 2023 from three firms: Circuit Transit Inc, Nomad Transit, LLC, and Transdev. A selection committee consisting of staff from the SFMTA, San Francisco Recreation and Parks, Metropolitan Transportation Commission, and Bayview Hunters Point Community Advocates evaluated these proposals and interviewed the three firms on December 18, 2023. The selection committee found Nomad Transit, LLC to be the highest-ranking proposer.

The subconsultants to Nomad Transit, LLC are listed below.

- HireArt, Inc.
- Kingbee Rentals LLC
- Serramonte Ford, Inc.
- Crosby Street Transit LLC

The SFMTA has agreed to limit Nomad's liability to the City for incidental and consequential damages, excluding liability for incidental and consequential damages resulting from specified acts, including, but not limited to, damages resulting from Nomad's gross negligence, claims or damages covered by the contract's required insurance, and Nomad's obligation to indemnify and defend the City for acts arising from Nomad's performance of the agreement. The Director of Transportation, in consultation with the City Attorney, has approved these liability limitations, as provided for in Administrative Code Section 21.23

Nomad Transit, LLC is a wholly owned subsidiary of Via Transportation, Inc. SFMTA's current working experience with Via Transportation, Inc, is primarily through one of Via Transportation, Inc's additional subsidiary companies, Remix. Since 2016, the Transit Planning team has used Remix's collaborative mapping software for transit route planning and analysis.

STAKEHOLDER ENGAGEMENT

The Bayview Community Shuttle represents part of SFMTA's continuing efforts to address the impacts in Bayview-Hunters Point of decades of structural and institutional racism. The program has been community-driven from its outset and will continue to center the needs, voices, and priorities of the residents of Bayview-Hunters Point throughout its implementation.

This Pilot Project is a direct recommendation from both the 2018 SFCTA District 10 Mobility Management Study and the 2020 SFMTA Bayview Community Based Transportation Plan (CBTP), which was approved by the SFMTA Board of Directors in February 2020.

The SFMTA executed the Sustainable Transportation Equity Project (STEP) grant agreement with CARB in August 2022 and established contracts with nine different Community Based

Organizations (CBOs) in early 2023. The CBO partners are listed in the table below.

| CBO | Scope |
|---|--|
| A. Philip Randolph Institute | Develop a Transportation Career Pathway Program to recruit and train residents to be employed as drivers and support staff; Chair the Workforce Development Project Committee |
| Bay Area Community Resources | Provide outreach to youth and affordable housing sites to promote the Transportation Resource Center |
| Bayview Hunters Point Community Advocates | Community Congress Lead - share information, education and updates regarding STEP grant implementation; engage residents and stakeholders in community engagement implementation; address transportation issues specific to the shuttle and apply restorative measures to transportation issues |
| Community Youth Center of San Francisco | Provide (1) Chinese language interpretation, translation and facilitation for the Community Shuttle outreach, education, and engagement activities, and to serve on the Shuttle Project Committee (2) a full-service community based resource, the Transportation Resource Center, to answer transportation-related questions and connect residents with the full range of options and services for which they are eligible; staff mobile sales van with MTA revenue team; tracking data for staff utilization & services utilized |
| Hunters Point Family | Provide youth outreach and facilitation services for the Community Shuttle and to serve on the Shuttle Project Committee |
| Mission Neighborhood Centers (MNC) – Inspiring Success (Evans Campus) | Provide Spanish language interpretation, translation and facilitation for the Community Shuttle outreach, education, and engagement activities and to serve on the Shuttle Project Committee |
| OneBayview | Provide online outreach and facilitation for the Community Shuttle and to serve on the Shuttle Project Committee |
| San Francisco African American Arts & Cultural District | Provide African American focused outreach and facilitation and to serve on the Shuttle Project Committee |
| Young Community Developers | Conduct outreach, engagement and promotion of the Transportation Career Pathway to recruit residents into the Project's Workforce Development Program |

Outreach started in April 2023 with the first Community Congress, an oversight and decision-making body for grant implementation composed of 15 individuals from the community,

meeting. The Community Congress and subcommittee meetings (Workforce Development, Shuttle Outreach, Transportation Resource Center) are held quarterly throughout the entirety of the CARB funded program and are open to the public.

As part of the first round of outreach in Spring and Summer 2023, 28 events were held, engaging almost 2,000 residents to provide feedback on the design of the shuttle service parameters, including the boundaries of the service areas, key destinations outside the Bayview-Hunters Point neighborhood, days and hours of operation, and wait times.

The SFMTA, CBOs, and Nomad Transit, LLC will work collaboratively throughout the duration of the Program to conduct outreach, with a focus on maximizing engagement with the community's most vulnerable and most hard-to-reach groups, including youth, seniors, persons with disabilities, residents living in affordable housing, and residents with low or no English language proficiency.

ALTERNATIVES CONSIDERED

In response to community requests, the project team submitted a proposal for a community-based shuttle pilot project as part of the CARB STEP grant application submittal in 2020. Since the grant would fund only a limited term duration of shuttle operation, the decision was made to contract out services. Many contractors are available in the field of providing on-demand microtransit services, with multiple similar deployments across the San Francisco Bay Area Region, who can deliver service at a lower cost than the City as we do not have the necessary vehicles, tools, and staffing to currently perform the work as listed in the CARB grant agreement. Funding is uncertain beyond the grant expiration date (March 2026) and as a result, it is difficult to establish new civil service positions, classes, or programs for a service that may not exist beyond the limited term grant period.

There is no current plan to transition this work back to City at the end of the grant program given the uncertainty of funding. However, pending the evaluation of the program, the City may decide to bring components of the program in-house in the future.

FUNDING IMPACT

The Program is funded by the California Air Resources Board (CARB) through their Sustainable Equity Transportation Project (STEP). STEP is a project within the California Climate Investments, a statewide initiative that puts billions of Cap-and-Trade dollars to work reducing greenhouse gas emissions, strengthening the economy, and improving public health and the environment – particularly in disadvantaged communities.

As part of the CARB grant requirements, the SFMTA obtained approval from the SFMTA Board of Directors on June 21, 2022 to accept grant funds in the amount of \$10,569,100 (Resolution No. 220621-056). In addition to the community shuttle component, the grant funding pays for other elements of the Program (workforce development, transportation resource center,

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community congress), five community-based organizations (CBOs) to provide outreach and engagement services, and SFMTA staff time.

The CARB grant will fully fund the Program and the Bayview Community Shuttle element. The contract for the Bayview Community Shuttle is for a value not to exceed \$4,341,992, which is below the project budget for the shuttle service provider contract of \$7,570,000. Per the terms of the CARB grant agreement the funds must be spent by March 15, 2026 and the use of CARB funds beyond that date will require a grant deadline extension.

ENVIRONMENTAL REVIEW

The proposed Bayview Community Shuttle Program is subject to the California Environmental Quality Act (CEQA).

CEQA provides a statutory exemption from environmental review under California Public Resources Code section 21080(b)(10) for a project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities. For purposes of this paragraph, “highway” shall have the same meaning as defined in Section 360 of the Vehicle Code, which includes “streets”.

On April 20, 2022, the SFMTA, under authority delegated by the San Francisco Planning Department, (Case Number 2022-002952ENV) determined that the proposed Bayview Community Shuttle Program is statutorily exempt from environmental review under California Public Resources Code section 21080(b)(10).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and may be found in the records of the Planning Department by Case Number at <https://sfplanninggis.org/pim/> or 49 South Van Ness Avenue, Suite 1400 in San Francisco, and are incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The SFMTA Contract Compliance Office has approved this procurement.

On May 15, 2023, the City’s Contract Monitoring Division waived Local Business Enterprise (LBE) subcontracting requirements for this procurement due to California Air Resources Board grant requirements; the nature of these specialized zero-emission vehicles, services and length of services; and a lack of potential LBE subcontracting opportunities.

The Civil Service Commission approved this personal services contract under PSC # 49911-22/23 on May 15, 2023.

The City Attorney has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Contract No. SFMTA-2023-24 with Nomad Transit, LLC to develop, launch, market, operate, manage, and maintain a turnkey community based on-demand shuttle service for the Bayview-Hunters Point neighborhood as part of the “Our Community, Our Shuttle: Bayview-Hunters Point Equitable Mobility” Program (Program) for a total amount not to exceed \$4,341,992 and an initial term expiring March 15, 2026, with two one-year options to extend for up to an additional two years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA seeks to implement a Pilot Project to run an on-demand community shuttle service in the Bayview-Hunters Point neighborhood to connect residents to regional transit, jobs, and other critical destinations; and,

WHEREAS, The community shuttle is one of four elements of the “Our Community, Our Shuttle: Bayview-Hunters Point Equitable Mobility” Program funded by the California Air Resources Board (CARB) under a grant; and,

WHEREAS, On June 21, 2022 the SFMTA Board approved participation in CARB’s Sustainable Transportation Equity Project (Resolution No. 220621-056); and,

WHEREAS, The Project seeks to accomplish goals of (1) improving community mobility (2) improving community health and reducing emissions (3) investing in the community and creating jobs (4) connecting residents to transportation solutions (5) supporting and supplementing existing transit services and (6) building community relations and ensuring community control; and,

WHEREAS, The SFMTA issued a Request for Proposals to identify qualified transportation service operators to develop, launch, market, operate, manage, and maintain a turnkey community based on-demand shuttle service for the Bayview-Hunters Point community and,

WHEREAS, On October 10, 2023, the SFMTA received written proposals from three firms: Circuit Transit Inc, Nomad Transit, LLC, and Transdev; and,

WHEREAS, A Selection Committee evaluated the three proposals, interviewed the three firms, and selected Nomad Transit, LLC as the highest-ranking proposer; and,

WHEREAS, The proposed Bayview Community Shuttle Program is subject to the California Environmental Quality Act (CEQA). CEQA provides a statutory exemption from environmental review under California Public Resources Code section 21080(b)(10) for a project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities. For purposes of this paragraph, “highway” shall have the same meaning as defined in Section 360 of the Vehicle Code, which includes “streets”; and,

WHEREAS, On April 20, 2022, the SFMTA, under authority delegated by the Planning Department, determined (Case Number 2022-002952ENV) that the Bayview Community Shuttle Program is statutorily exempt from CEQA under California Public Resources Code Sections 21080(b)(10); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and may be found in the records of the Planning Department by Case Number at <https://sfplanninggis.org/pim/> or 49 South Van Ness Avenue, Suite 1400 in San Francisco, and are incorporated herein by reference; therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2023-24 with Nomad Transit, LLC to develop, launch, market, operate, manage, and maintain a turnkey community based on-demand shuttle service for the Bayview-Hunters Point neighborhood as part of the “Our Community, Our Shuttle: Bayview-Hunters Point Equitable Mobility” Program for a total amount not to exceed \$4,341,992 and an initial term expiring March 15, 2026, with two one-year options to extend for up to an additional two years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 18, 2024.

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

Nomad Transit, LLC

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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
Nomad Transit, LLC
Contract No. SFMTA-2023-24**

This Agreement is made as of _____, in the City and County of San Francisco (City), State of California, by and between Nomad Transit, LLC, a Delaware limited liability company and a wholly-owned subsidiary of Via Transportation, Inc., (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. On August 28, 2020, the SFMTA submitted an application to the California Air Resources Board (CARB), Sustainable Transportation Equity Project (STEP) Program to provide an on-demand shuttle service program for the Bayview-Hunters Point Community.

B. CARB has awarded a grant to the SFMTA for the Bayview Community Shuttle Project under Grant No. STEP-IG-04, effective August 11, 2022, as amended by Grant No. STEP-IG-04-1, effective March 8, 2023.

C. The SFMTA wishes to contract with Contractor to provide a turnkey microtransit on-demand shuttle service and mobile ride reservation application service for San Francisco's Bayview-Hunters Point neighborhood.

D. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on August 16, 2023, pursuant to which City selected Contractor as the highest-qualified scorer.

E. There is no Local Business Enterprise (LBE) subcontracting participation requirement for this Agreement.

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

G. The City's Civil Service Commission approved Contract number 49911-23/23 on May 15, 2023.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

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

1.1 “**Acceptance**” means notice from the City to Contractor that the SaaS Application meets the specifications and requirements contained in the Documentation and Appendices A (Scope of Services) and B (SaaS Application and Hosted Services).

1.2 “**Acceptance Period**” means the period allocated by City to test the SaaS Application to determine whether it conforms to the applicable specifications and, if appropriate, properly operates in the defined operating environment, is capable of running on a repetitive basis, and is otherwise in compliance with the service level obligations without failure.

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

1.4 “**Authorized User**” means a person authorized by City to access the City’s Portal and use the SaaS Application, including any City employee, contractor, or agent, or any other individual or entity authorized by City.

1.5 “**Back-Up Environment**” means Contractor’s back-up Data Center for the SaaS Services.

1.6 “**Business Hours**” means 6:00am-6:00pm U.S. Pacific Time.

1.7 “**CCO**” means the SFMTA Contract Compliance Office.

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

1.9 “**City Data**” or “**Data**” means that data as described in Article 13 of this Agreement, which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement, including data resulting from use of the SaaS Services. City Data includes, without limitation, Confidential Information.

1.10 “**City Portal**” means an electronic gateway to a secure entry point via Contractor’s Website that allows City and its Authorized Users to log in to an area where they can view and download information or request assistance regarding the SaaS Application and Services.

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

1.12 “**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).

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

1.14 “Contractor” or “Consultant” means Nomad Transit, LLC, 114 Fifth Avenue, Floor 17, New York, NY 10011.

1.15 “Contractor Project Manager” means the individual specified by Contractor pursuant to Section 4.15.1 hereof, as the Project Manager authorized to administer this Agreement on Contractor’s behalf.

1.16 “Contractor’s Website” means the Website that provides an Authorized User access to the SaaS Application and Services and which provides End Users with the ability book rides through the Internet for the on-demand shuttle service serving San Francisco’s Bayview-Hunters Point neighborhood and provides information about the shuttle service.

1.17 “C&P” means SFMTA Contracts and Procurement.

1.18 “Data Breach” or “Breach” means any access, destruction, loss, theft, use, modification or disclosure of City Data by an unauthorized party or that is in violation of the Agreement terms and/or applicable local, state or federal law.

1.19 “Data Center(s)” means the data center(s) located in the United States used to host the SaaS Application(s) and City Data.

1.20 “Day” (whether or not capitalized) means a calendar day, unless otherwise designated.

1.21 “Deliverables” means Contractor’s work product resulting from the Services 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.

1.22 “Deliverable Data” means Project Data that is identified in Appendix A and required to be delivered to the City and the California Air Resources Board.

1.23 “Director” means the Director of Transportation of the SFMTA or his or her designee.

1.24 “Disabling Code” means computer instructions or programs, subroutines, code, instructions, data, or functions (e.g., viruses, worms, date bombs or time bombs)—including, but not limited to, data storage, computer libraries, programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function—which alter, destroy, inhibit, damage, interrupt, interfere with, or hinder the operation of the City's access to the SaaS Services through the Contractor's Website and/or Authorized User's processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

1.25 “Documentation” means technical publications provided by Contractor to City relating to use of the SaaS Application(s), such as reference, administrative, maintenance, and programmer manuals.

1.26 “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.

1.27 “End User” means an Authorized User who accesses Contractor’s Website and/or uses the SaaS Application and Services.

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

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

1.30 “Mobile Application” means the demand-responsive mobile ride reservation smartphone application providing End Users the ability to book rides for the on-demand shuttle service serving San Francisco’s Bayview-Hunters Point neighborhood.

1.31 “Open Source Software” means software with either freely obtainable source code, a license for modification, or permission for free distribution.

1.32 “Party” and “Parties” mean the City and Contractor, either collectively or individually.

1.33 “Performance Credit” means credit due to City by Contractor with regard to Contractor’s SaaS maintenance obligations in Appendix B (SaaS Application and Hosted Services).

1.34 “Personally Identifiable Information (PII)” means any information about an individual, including information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that can reasonably be linked to an individual, such as medical, educational, financial, and employment information.

1.35 “Precedence” means that, notwithstanding the terms of any other document executed by the Parties as a part of this Agreement, the terms of this Agreement shall control over any discrepancy, inconsistency, gap, ambiguity, or conflicting terms set forth in any other Contractor pre-printed document.

1.36 “Project Data” means data that is first produced in the performance of this Agreement.

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

1.38 “SaaS Application(s)” means the Mobile Application and Website provided by Contractor.

1.39 “SaaS Application Patch” means an update to the SaaS Application comprised of code inserted (or patched) into the code of the SaaS Application, and which may be installed as a temporary fix between full releases of a SaaS Application Revision or SaaS Application Version. Such a patch may address a variety of issues, including without limitation, fixing a Software bug, installing new drivers, addressing new security vulnerabilities, addressing Software stability issues, and upgrading the Software. SaaS Application Patches are included in the payments made by City to Contractor for the SaaS Services under this Agreement.

1.40 “SaaS Implementation and Training Services” means the services by which Contractor will implement all necessary Software configurations and modules necessary to make the SaaS Application available and accessible to City.

1.41 “SaaS Issue” means a problem with the SaaS Services identified by the City that requires a response by Contractor to resolve.

1.42 “SaaS Maintenance Services” means the activities to investigate, resolve SaaS Application and Services issues, and correct product bugs arising from the use of the SaaS Application and Services in a manner consistent with the published specifications and functional requirements defined during implementation.

1.43 “SaaS Services” means the Services, as specifically described in the “Scope of Services” attached as Appendix A and in “SaaS Application and Hosted Services” attached as Appendix B, performed by Contractor to host the SaaS Application to provide the functionality listed in the Documentation.

1.44 “SaaS Severity Level” means a designation of the effect of a SaaS Issue on the City. The severity of a SaaS Issue is initially defined by the City and confirmed by Contractor. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor’s analysis of impact to business.

1.45 “SaaS Software” means those SaaS licensed programs and associated documentation licensed to City by Contractor as listed in this Agreement and Appendices, and any modification or Upgrades to the program(s) provided under this Agreement.

1.46 “SaaS Software Error” means any failure of the SaaS Software to conform in all material respects to the requirements of this Agreement or Contractors published specifications.

1.47 “SaaS Software Error Correction” means either a modification or addition that, when made or added to the SaaS Software, brings the SaaS Software into material conformity with the published specifications, or a procedure or routine that, when observed in the regular operation of the SaaS Software, avoids the practical adverse effect of such nonconformity.

1.48 “SaaS Software Revision” means an update to the current SaaS Software Version of the SaaS Software code that consists of minor enhancements to existing features and code corrections. SaaS Software Revisions are provided and included with the service payments made by City to Contractor for the SaaS Service.

1.49 “SaaS Software Version” means the base or core version of the SaaS Software that contains significant new features and significant fixes and is available to the City. SaaS Software Versions may occur as the SaaS Software architecture changes or as new technologies are developed. The nomenclature used for updates and upgrades consists of major, minor, build, and fix and these correspond to the following digit locations of a release: a, b, c, d. An example would be NCC 7.4.1.3, where 7 refers to the major release, the 4 refers to the minor release, the 1 refers to the build, and the 4 refers to a fix. All SaaS Software Versions are provided and included as part of this Agreement upon request or approval from City for the upgrade.

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

1.51 “Scheduled SaaS Maintenance” means the time (in minutes) during the month, as measured by Contractor, in which access to the SaaS Services is scheduled to be unavailable for use by the City due to planned system maintenance and major version upgrades.

1.52 “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.

1.53 “SFMTA Project Manager” means the individual specified by the SFMTA pursuant to Section 4.15.1 hereof, as the Project Manager authorized to administer this Agreement on the City’s behalf.

1.54 “Successor Service Provider” means a new service provider, if any, selected by City in the event the SaaS Services are terminated under this Agreement.

1.55 “Transition Services” means that assistance reasonably requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date and expire two years from the Effective Date, unless earlier terminated as otherwise provided herein.

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

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller 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 Calculation of Charges. Contractor shall provide an invoice to the SFMTA for Services completed (including SaaS Services and goods delivered, if any) in the immediately preceding month, unless a different schedule is set out in Appendix C (Calculation of Charges). Compensation shall be made for goods and/or Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes have been satisfactorily performed. In no event shall the amount of this Agreement exceed Four Million Three Hundred Forty-One Thousand Nine Hundred and Ninety-Two Dollars (\$4,341,992). The breakdown of charges associated with this Agreement appears in Appendix C. As described in Appendix C, the City may withhold a portion of payment as retention until the conclusion of the Agreement if agreed to by both Parties. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services and Delivery of Goods. Contractor is not entitled to any payments from City until the SFMTA approves the goods and/or Services delivered under this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. The City may reject goods and/or Services delivered under this Agreement that do not conform to the requirements of this Agreement. In such case, Contractor must replace the non-conforming goods and/or Services without delay and at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide goods and/or 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.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the City's Controller and the SFMTA, and include a unique invoice number and a specific invoice date. City will make payment as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered or Services performed, sales/use tax (if applicable), contract payment terms, and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 Payment Terms

(a) **Payment Due Date:** Unless the SFMTA notifies the Contractor that a dispute exists, Payment shall be made within 30 Days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted the electronic payment to Contractor.

(b) **Reserved. (Payment Discount Terms)**

(c) No additional charge shall accrue against City in the event City does not make payment within any time specified by Contractor.

3.3.6 LBE Payment and Utilization Tracking System. Contractor shall pay LBE subcontractors within three business days as provided under Chapter 14B.7(H)(9). Within ten business days of the SFMTA's payment of an invoice, Contractor shall confirm that all subcontractors have been paid via the B2Gnow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CMD. Failure to submit all required payment information to the City's Financial System with each payment request may result in the withholding of 20% of the payment due.

3.3.7 Getting Paid by the City for Goods and/or Services

(a) The City utilizes the Paymode-X[®] service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

3.3.8 Grant-Funded Contracts.

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

(b) **Grant Terms.** The funding for this Agreement is provided to the SFMTA in full or in part by a Federal or State grant. As part of the terms of receiving the funds, the SFMTA must incorporate some of the terms into this Agreement (Grant Terms). The incorporated Grant Terms may be found in Appendix E (Grant Terms). To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Term and the other provision(s), the Grant Term shall apply.

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

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during 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 less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights 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.

3.6 Payment of Prevailing Wages

3.6.1 Covered Services. Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] or Section 21C [Miscellaneous Prevailing Wage Requirements] of the Administrative Code (collectively, “Covered Services”). The provisions of Section 6.22(e) and 21C of the Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

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

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

3.6.4 Posted Notices. As required by Section 1771.4 of the California Labor Code, Contractor shall post job site notices prescribed by the California Department of Industrial Relations (DIR) at all job sites where services covered by Chapter 6.22 are to be performed.

3.6.5 Payroll Records. As required by Section 6.22(e)(6) of the Administrative Code and Section 1776 of the California Labor Code, Contractor shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and the DIR.

3.6.6 Certified Payrolls. Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Contractor shall submit payrolls to the City via the reporting system selected by the City. The DIR will specify how to submit certified payrolls to it. The City will provide basic training in the use of the reporting system at a scheduled training session. Contractor and all subcontractors that will perform Covered Services must attend the training session. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

3.6.7 Compliance Monitoring. Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code. Steps and actions include but are not limited to requirements that: (i) the Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Contractors by the Charter and Chapter 6 of the San Francisco Administrative Code; (ii) the Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (iii) the Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iv) the Contractor shall prominently post

at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (v) that the Labor Standards Enforcement Officer may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Contractors. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

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

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services stated in Appendix A (Scope of Services) and Appendix B (SaaS Application and Hosted Services), and the following:

4.1.1 Provide all hardware, software and other equipment at Contractor's hosting site as described in Appendix B or any description of Services (and any applicable disaster recovery site) as necessary to host and deliver the SaaS Application(s) and Services described in Appendices A and B.

4.1.2 Provide Users access to the SaaS Application(s) and Services pursuant to the grant of access in Section 4.10.

4.1.3 Maintain the correct operation of the SaaS Application(s) and Website, and provide SaaS Maintenance Services and support services as specified in this Agreement.

4.2 Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendices A and B, unless Appendices A or B are modified as provided in Section 11.5 (Modification of this Agreement).

4.3 Qualified Personnel. Contractor shall use only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will 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 Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.4 Subcontracting

4.4.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.4.2 City's execution of this Agreement constitutes its approval of the subcontractors listed below.

- HireArt, Inc.
- Kingbee Rentals LLC
- Serramonte Ford, Inc.
- Crosby Street Transit LLC

4.5 Independent Contractor; Payment of Employment Taxes and Other Expenses

4.5.1 Independent Contractor. For the purposes of this Section 4.4, "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.

4.5.2 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 this Section 4.4 shall be solely limited to 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.

4.6 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 as required under City law and under the policy of the SFMTA Board of Directors. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable

satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with City; and (c) 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.

4.7 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.

4.8 Reserved. (Liquidated Damages)

4.9 SaaS Licensed Software. Subject to the terms and conditions of this Agreement, Contractor grants City and Authorized Users a renewable, irrevocable, non-exclusive, royalty-free, and worldwide license to access, display, and execute the SaaS Application and SaaS Services during the Term of this Agreement, as the Agreement may be amended or renewed.

4.10 Click-Wrap Disclaimer. No "click to accept" agreement that may be required for the City and/or Authorized Users' access to the SaaS Services or Contractor's Website, and no "terms of use" or "privacy policy" referenced therein or conditioned for use of the SaaS Services or Contractor's Website, shall apply. Only the provisions of this Agreement as amended from time to time shall apply to City and/or Authorized Users for access thereto and use thereof. The Parties acknowledge that City and/or each Authorized User may be required to click "Accept" as a condition of access to the SaaS Services through the Contractor's Website, but the provisions of such "click to accept" agreement and other terms (including Terms of Use and Privacy Policy) referenced therein shall be null and void for City and/or each such Authorized User. The foregoing does not apply to the City's own click-wrap agreements in the event the City chooses to have Contractor include terms of use, terms or service, privacy policies, or similar requirements drafted and approved by the City.

4.11 SaaS Application Title. City acknowledges that title to the SaaS Application(s) and SaaS Services shall at all times remain with Contractor, and that City has no rights in the SaaS Application(s) or SaaS Services except those expressly granted by this Agreement.

4.12 Authorized APIs. City shall be permitted to access and use Contractor's SaaS Application Program Interfaces (APIs) when commercially available to develop and modify, as necessary, macros and user interfaces for use with any existing or future City systems and

infrastructure. For purposes of this Agreement, such development shall be deemed an authorized modification but will not be supported by Contractor unless provided for in this Agreement. Functionality and compatibility of City-developed macros will be the sole responsibility of City. Any such macros or user interfaces developed by City shall become the property of City. All flat-file exchanges will be over an encrypted file transport service (ftps/vsftpd/scp/sftp) to a secure private ftp site.

4.13 Proprietary Markings. City agrees not to remove or destroy any proprietary markings or proprietary legends placed on or contained within the SaaS Application or any related materials or Documentation.

4.14 Project Managers; Services Contractor Agrees to Perform

4.14.1 Contractor and the SFMTA shall each designate a Project Manager, who shall be accessible by telephone throughout the duration of the Agreement and shall be available 9 a.m. to 5 p.m. PT, Monday through Friday, excluding City-designated holidays. These hours may be adjusted by mutual agreement between the SFMTA and Contractor. Contractor shall use its best efforts to maintain the same Project Manager throughout the duration of the Agreement. However, if Contractor needs to replace its Project Manager, Contractor shall provide the SFMTA written notice thereof at least 45 Days prior to the date the Project Manager shall be replaced. Notwithstanding the foregoing, Contractor will have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. Contractor shall notify the SFMTA in advance of any such temporary appointments. The SFMTA may require Contractor to replace its Project Manager by giving Contractor notification and the City's objective reasons for the replacement.

Contractor's Project Manager: **Joe Martin**
Partner Success Manager
400 Montgomery St., Floor 4
San Francisco, CA 94104
joe.martin@ridewithvia.com
(804) 986-9292

SFMTA’s Project Manager:

Robert Lim

SFMTA Program Manager, Streets Division
SFMTA

1 South Van Ness, 7th Floor

San Francisco, CA 94103

Robert.Lim@sfmta.com

(415) 646-2403

4.15 Acceptance Testing; Document Delivery; Training.

4.15.1 After the SFMTA has obtained access to the SaaS Application and Services, and subsequent to each SaaS Software version upgrade, revision and patch as further outlined in Appendix B, the SFMTA and Contractor shall conduct user acceptance testing as outlined in Appendices A and B, as the case may be, to verify that the SaaS Application and Services substantially conform to the specifications and the SFMTA’s requirements contained therein. In the event that the SFMTA determines that the SaaS Services do not meet such specifications, the SFMTA shall notify Contractor in writing, and Contractor shall modify or correct the SaaS Services so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which the SFMTA provides Contractor with written notice of satisfactory completion of Acceptance testing. If the SFMTA notifies Contractor after the Acceptance Testing Period that the SaaS Services do not meet the Acceptance criteria outlined in Appendices A and B, as the case may be, then the SFMTA shall be entitled to terminate this Agreement in accordance with the procedures specified in Article 8 herein, and shall be entitled to a full refund of any fees paid as part of this Agreement prior to termination.

4.15.2 Document Delivery. Contractor shall deliver completed Documentation in electronic format for the SaaS Application and Services at the time it gives the SFMTA access to the SaaS Application and Services. The Documentation shall accurately and completely describe the functions and features of the SaaS Application and Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the SaaS Application and Services. The SFMTA shall have the right to make any number of additional copies of the Documentation at no additional charge. The SFMTA may withhold its issuance of the Notice of Final Acceptance until the SFMTA receives the completed Documentation.

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) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and a \$5,000,000 annual policy aggregate. Policy must include Abuse and Molestation coverage.

(b) Commercial Automobile Liability Insurance with limits not less than \$5,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

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

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

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

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

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

(f) Cyber and Privacy Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(g) **Reserved. (Pollution Liability Insurance)**

5.1.2 Additional Insured Endorsements

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees and the State of California and California Air Resources Board, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees, and the State of California and California Air Resources Board, its Officers, Agents, and Employees.

(c) Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement)

5.1.3 Waiver of Subrogation Endorsements

(a) 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.

5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved. (Pollution Liability Insurance Primary Insurance Endorsement)

5.1.5 Other Insurance Requirements

(a) Thirty Days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment, for which no less than 10 Days' notice shall be provided to City. 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 page.

(b) 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 Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

5.2.1 General 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.

Contractor shall be wholly responsible for the safety of its employees, Subcontractors, Subconsultants and Suppliers while performing Services on or related to the Project, and City shall have no liability whatsoever for said persons' safety except as specifically provided in this Agreement. To the maximum extent allowable by law, Contractor shall defend and indemnify City against any action arising from a violation by Contractor, its employees, Subcontractors, Subconsultants and Suppliers of a safety regulation or order.

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's liability is not limited by the coverage of any insurance policy. Contractor's failure or inability to procure or maintain insurance of any kind shall not limit Contractor's liability.

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.

5.2.2 Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the SaaS Application and Services infringes a patent, copyright, or any right of a third-party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, and Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise, only if Contractor accepts the defense and hold harmless requirements without reservation; provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an

admission of guilt, fault or culpability or incur any expense without City's prior written consent, which shall not be unreasonably withheld or delayed.

If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the SaaS Application and/or Services constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any) and Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement, only if Contractor accepts the defense and hold harmless requirements without reservation; provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed.

In the event a final injunction is obtained against City's use of the SaaS Application and Services by reason of Infringement, or in Contractor's opinion City's use of the SaaS Application and Services is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the SaaS Application and Services as contemplated hereunder, (b) replace the SaaS Application and Services with a non-infringing, functionally equivalent substitute SaaS Application and Services, or (c) suitably modify the SaaS Application and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the SaaS Application and Services. If none of these options is reasonably available to Contractor, then this Agreement may be terminated at the option of either Party hereto, and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing SaaS Application and/or Services.

Any unauthorized modification or attempted modification of the SaaS Application and Services by City or any failure by City to implement any improvements or updates to the SaaS Application and Services, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the SaaS Application and Services with products or data of the type for which the SaaS Application and Services was neither designed nor intended to be used, unless City has obtained prior written authorization from Contractor permitting such use.

5.3 Warranties of Contractor

5.3.1 Warranty of Authority; No Conflict. Each Party warrants to the other that it is authorized to enter into this Agreement and that its performance of the Agreement will not conflict with any other agreement.

5.3.2 Warranty of Performance. Contractor warrants that when fully implemented, the SaaS Application to be configured and provided under this Agreement shall perform in accordance with the applicable specifications. With respect to all Services to be performed by Contractor under this Agreement, including SaaS Services outlined in the “Scope of Services” in Appendix A, and “SaaS Application and Hosted Services” outlined in Appendix B, Contractor warrants that it will use reasonable care and skill. All Services shall be performed in a professional, competent and timely manner by Contractor personnel appropriately qualified and trained to perform such Services. In the event of a breach of the foregoing warranty relating to any Service under this Agreement within 12 months from the date of provision of such Services, Contractor shall, at its sole cost and expense, re-perform such Services.

5.3.3 Compliance with Description of Services. Contractor represents and warrants that the SaaS Application and Services specified in this Agreement, and all updates and improvements to the SaaS Application and Services, will comply in all material respects with the specifications and representations specified in the Documentation (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) or in any amendment or update to the Documentation.

5.3.4 Title. Contractor represents and warrants to City that it is the lawful owner or license holder of all Software, materials and property identified by Contractor as Contractor-owned and used by it in the performance of the SaaS Services contemplated hereunder and has the right to permit City access to or use of the SaaS Application and Services and each component thereof. To the extent that Contractor has used Open Source Software (OSS) in the development of the SaaS Application and Services, Contractor represents and warrants that it is in compliance with any applicable OSS license(s) and is not infringing.

5.3.5 Disabling Code. Contractor represents and warrants that the SaaS Application and Services, and any information, reports or other materials provided to Authorized Users as a result of the operation of the SaaS Application and Services, including future enhancements and modifications thereto, shall be free of any Disabling Code.

5.3.6 Warranty of Suitability for Intended Purpose. Contractor warrants that the SaaS Application and Services will be suitable for the intended purpose of this Agreement.

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 (COMPENSATION) 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 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CONTRACTOR SHALL NOT BE RESPONSIBLE FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES RESULTING IN WHOLE OR IN PART FROM CONTRACTOR'S ACTS OR OMISSIONS. HOWEVER, CONTRACTOR SHALL BE LIABLE FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES RESULTING FROM (1) DAMAGES CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE, RECKLESS CONDUCT OR WILLFUL ACTS OR OMISSIONS, (2) CLAIMS OR DAMAGES THAT FALL WITHIN THE INSURANCE COVERAGE OF THIS AGREEMENT, (3) STATUTORY DAMAGES, INCLUDING THOSE SPECIFIED IN THIS AGREEMENT, (4) CONTRACTOR'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO THE GENERAL INDEMNIFICATION CLAUSE AND FOR INTELLECTUAL PROPERTY INFRINGEMENT, (5) CONTRACTOR'S WARRANTIES UNDER THIS AGREEMENT, (6) WRONGFUL DEATH CAUSED BY CONTRACTOR, (7) PUNITIVE DAMAGES, (8) FINES, EXPENSES, DAMAGES CAUSED BY CONTRACTOR'S VIOLATION OF FEDERAL, STATE OR LOCAL LAWS REGARDING PRIVACY AND/OR HEALTH INFORMATION AND (9) DAMAGES CAUSED BY CONTRACTOR'S DEFAULT OR BREACH OF THE AGREEMENT.

6.3 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.

Article 7 Payment of Taxes

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

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

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

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

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

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause by giving Contractor a 90-day termination notice. 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 may include any or all of the following, 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 include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

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

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

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to 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 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 listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, 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 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:

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| 3.5 | Submitting False Claims |
| 4.6 | Assignment |
| Article 5 | Insurance and Indemnity |
| Article 7 | Payment of Taxes |
| 10.10 | Alcohol and Drug-Free Workplace |

11.10 Compliance with Laws
Article 13 Data and Security

(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 is not cured within 10 Days after written notice thereof from the SFMTA to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, the SFMTA may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(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. This Section 8.2.2 shall survive termination of this Agreement.

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 to the address set forth in Article 11, and in the manner prescribed in Article 11.

8.3 Bankruptcy. In the event that Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at City's option this Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement pursuant to this Section, Contractor shall within 48 hours return City's Data in an agreed-upon machine readable format. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within 30 Days clear, purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five Days that such clear, purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or the most current industry standard.

8.4 Transition Services and Disposition of City Data. Upon expiration or termination of the SaaS Services under this Agreement:

8.4.1 Contractor may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services. Within five Days of the expiration or termination of the SaaS Services, Contractor shall return City's data in an agreed-upon machine readable format. This provision shall also apply to all City Data that is in the possession of subcontractors, agents or auditors of Contractor. Such data transfer shall be done at no cost to the City. Once Contractor has received written confirmation from the SFMTA that City's Data has been successfully transferred to City, Contractor shall within 30 Days clear or purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five Days that such clear or purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with NIST Special Publication 800-88 or the most current industry standard.

8.4.2 Contractor shall provide to City and/or Successor Service Provider assistance requested by the SFMTA to effect the orderly transition of the SaaS Services, in whole

or in part, to City or to Successor Service Provider. During the transition period, SaaS and City Data access shall continue to be made available to City without alteration. Such Transition Services shall be provided on a time and materials basis if the SFMTA opts to return to its own servers or chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated SaaS Services from Contractor to Successor Service Provider; (b) if required, transferring the City Data to Successor Service Provider; (c) using commercially reasonable efforts to assist the SFMTA in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Contractor in connection with the Services; (d) using commercially reasonable efforts to make available to the SFMTA, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Contractor in connection with the SaaS Services; and, (e) such other activities upon which the Parties may agree. Notwithstanding the foregoing, should City terminate this Agreement due to Contractor’s material breach, the SFMTA may elect to use the Services for a period of no greater than six months from the date of termination at a reduced rate of 20% percent off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section 8.4.2 shall survive the termination of this Agreement.

8.5 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.

8.6 Rights and Duties upon Termination or Expiration

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

- 3.3.2 Payment Limited to Satisfactory Services and Delivery of Goods
- 3.3.8(a) Grant Funded Contracts - Disallowance
- 3.4 Audit and Inspection of Records
- 3.5 Submitting False Claims
- 4.5 Independent Contractor; Payment of Employment Taxes and Other Expenses
- Article 5 Insurance and Indemnity
- 6.1 Liability of City
- Article 7 Payment of Taxes
- 8.1.6 Payment Obligation
- 8.4 Transition Services and Disposition of City Data
- 8.5 Non-Waiver of Rights
- 9.1 Ownership of Results
- 9.2 Works for Hire

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|------------|-------------------------------------|
| 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 |
| Article 13 | Data and Security |

8.6.2 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.

8.7 Data Rights

8.7.1 Preexisting Data of each Party that will be included as a Deliverable under this Agreement will be identified in Appendix A. Preexisting Data of the City may only be used by Contractor for purposes of the Scope of Work of this agreement, unless such data is otherwise publicly available.

8.7.2 The City shall have the unrestricted right to use the Deliverable Data and delivered project Data, including all preexisting data provided as a Deliverable under this Agreement.

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, reports, diagrams, surveys, blueprints, 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. The parties agree that the Deliverables will not include any software, source code or other similar works of authorship, and Contractor will not create any software, source code or any other similar works of authorship unless expressly agreed in a separate writing in advance.

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 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's

authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

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

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

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall

meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

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

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 (a) 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, (b) a candidate for that City elective office, or (c) 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.

10.12 Reserved. (Slavery Era Disclosure).

10.13 Reserved. (Working with Minors).

10.14 Consideration of Criminal History in Hiring and Employment Decisions

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

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

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

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

10.17 Reserved. (Distribution of Beverages and Water)

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

10.19 Reserved. (Preservative-Treated Wood Products)

Article 11 General Provisions

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

To City: Robert Lim
SFMTA Program Manager, Streets Division
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Robert.Lim@sfmta.com

To Contractor: Alex Lavoie
Manager – Nomad Transit, LLC
114 Fifth Avenue, Floor 17
New York, NY 1001
alex@ridewithvia.com

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. 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 acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794(d), Web Content Accessibility Guidelines (WCAG) 2.0 Levels A and AA; and WCAG 1.0 Level AA, to the extent these guidelines include additional requirements that are not included in

and are not inconsistent with WCAG 2.0 Levels A and AA and WCAG 2.1, as updated from time to time.

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

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

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10

and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

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

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

11.9 Entire Agreement. This Contract sets forth the entire agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

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

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated October 10, 2023. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, and any implementing task orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms

from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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/largevehicletrainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

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.

13.2 City Data

13.2.1 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data, and any derivative works of the City Data, is the exclusive property of the City.

13.2.2 Use of City Data. Contractor agrees to hold City Data received from, or created or collected on behalf of, the City in strictest confidence. Contractor shall not use or disclose City's Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work that involves using, sharing, or storage of City's Data 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 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, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized, other than security or service delivery analysis.

13.2.3 Access to and Extraction of City Data. City shall have access to City Data 24-hours a day, 7 days a week. The SaaS Application shall be capable of creating a digital, reusable copy of the City Data, in whole and in parts, as a platform independent and machine-readable file. Such file formats include, without limitation, plain text files such as comma-delimited tables, extensible markup language, and javascript object notation. City Data that is stored in binary formats, including without limitation portable document format, JPEG, and portable network graphics files, shall instead be reproducible in the same format in which it was loaded into the SaaS Application. This reusable copy must be made available in a publicly documented and non-proprietary format, with a clearly defined data structure and a data dictionary for all terms of art contained in the Data. For purposes of this section, non-proprietary formats include formats for which royalty-free codecs are available to Authorized Users. Contractor warrants that City shall be able to extract City Data from the SaaS Application on demand, but no later than 24 hours of City's request, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees to Contractor).

13.2.4 Backup and Recovery of City Data. As a part of the SaaS Services, Contractor is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such Data in the event of data corruption or interruption of the SaaS Services.

Unless otherwise described in Appendices A and/or B, Contractor shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and as outlined in Appendix B and maintaining the security of City Data as further described herein. Contractor's backup of City Data shall not be considered in calculating storage used by City.

13.2.5 Data Breach; Loss of City Data. In the event of any Data Breach, SaaS Software Error, omission, negligence, misconduct, breach or other act that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of City Data, Contractor shall, as applicable:

(a) Notify City immediately following discovery, but no later than 72 hours, of becoming aware of such occurrence or suspected occurrence. Contractor shall use best efforts to inform City prior to 72 hours of discovery. Contractor's report shall identify:

- (i) the nature of the unauthorized access, use or disclosure;
- (ii) the Confidential Information accessed, used or disclosed;
- (iii) the person(s) who accessed, used, disclosed and/or received protected information (if known);
- (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure; and
- (v) what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure.

(b) In the event of a suspected Breach, Contractor shall keep the City informed regularly of the progress of its investigation until the uncertainty is resolved;

(c) Contractor shall coordinate with the City in its Breach response activities, including, without limitation:

- (i) Immediately preserve any potential forensic evidence relating to the Breach, and remedy the Breach as quickly as circumstances permit;
- (ii) Promptly (within two business days) designate a contact person to whom the City will direct inquiries, and who will communicate Contractor responses to City inquiries;

(iii) As rapidly as circumstances permit, apply appropriate resources to remedy the Breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;

(iv) Provide status reports to the City on Data Breach response activities, either on a daily basis or a frequency approved by the City;

(v) Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;

(vi) Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and

(vii) Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.

(d) In the case of personally identifiable information (PII) or protected health information (PHI), at City's sole election, (a) notify the affected individuals as soon as practicable, but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five Days of the occurrence; or, (b) reimburse City for any costs in notifying the affected individuals;

(e) In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than 24 months following the date of notification to such individuals;

(f) Perform or take any other actions required to comply with applicable law as a result of the occurrence;

(g) Recreate lost City Data in the manner and on the schedule set by City without charge to City; and

(h) Provide to City a detailed plan within 10 Days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

(i) Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain (at the City's election) information that may include: name and contact information of Contractor's (or City's) representative; a description of the nature of the loss; a list of the types of Data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what

steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor.

(j) 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.

(k) City shall conduct all media communications related to such Data Breach, unless in its sole discretion, City directs Contractor to do so.

13.3 Payment Card Industry (PCI) Requirements. Contractors providing services and products used to process, transmit or store cardholder data and /or connect with the cardholder data environment ("CDE") are required to support City by ensuring services and products deployed in accordance with vendor instruction will not prevent the City from implementing controls mandated by the Payment Card Industry Data Security Standard ("PCI DSS") requirements and are subject to the following requirements:

13.3.1 To the extent Contractor is deemed to be a Service Provider, as that term is defined by the PCI DSS, Contractor shall provide the City with a copy of a valid, compliant and executed Attestation of Compliance ("AOC") associated with a Report on Compliance ("ROC") applicable to the products and /or services being provided under this Agreement prior to the effective date of this Agreement and at least annually thereafter.

13.3.2 The Contractor who processes, stores or transmits cardholder data on behalf of City shall comply with evolving payment brand specifications and with security programs such as and without limitation Visa Cardholder Information Security Program ("CISP") and MasterCard Site Data Protection ("SDP") programs.

13.3.3 Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

13.4 Reserved. (Business Associate Agreement).

13.5 Proprietary or Confidential Information

13.5.1 Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement may involve access to City Data that is Confidential Information. Contractor and any

subcontractors or agents shall use Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of Confidential Information, and only as necessary in the performance of this Agreement. Contractor's failure to comply with any requirements of local, state or federal laws restricting access, use and disclosure of Confidential Information shall be deemed a material breach of this Agreement, for which City may terminate the Agreement. In addition to termination or any other remedies set forth in this Agreement or available in equity or law, the City may bring a false claim action against the Contractor pursuant to Chapters 6 or 21 of the Administrative Code, or debar Contractor. Contractor agrees to include all of the terms and conditions regarding Confidential Information contained in this Agreement in all subcontractor or agency contracts providing services under this Agreement.

13.5.2 Obligation of Confidentiality. Subject to San Francisco Administrative Code Section 67.24(e), any state open records or freedom of information statutes, and any other applicable laws, Contractor agrees to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than its employees, agents, or authorized subcontractors who have a need to know in connection with this Agreement, or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. Contractor agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

13.5.3 Nondisclosure. Contractor agrees and acknowledges that it shall have no proprietary interest in any proprietary or Confidential Information and will not disclose, communicate or publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Agreement or as otherwise authorized in writing by the City, any of the Confidential Information it produces, receives, acquires or obtains from the disclosing Party. Contractor shall take all necessary steps to ensure that the Confidential Information is securely maintained. Contractor's obligations set forth herein shall survive the termination or expiration of this Agreement. In the event Contractor becomes legally compelled to disclose any of the Confidential Information, it shall provide the City with prompt notice thereof and shall not divulge any information until the City has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by the disclosing Party are unsuccessful, or the disclosing Party otherwise waives its right to seek such remedies, the receiving Party shall disclose only that portion of the Confidential Information that it is legally required to disclose

13.5.4 Litigation Holds. 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.

13.5.5 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 City's Data under this Agreement, or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

13.5.6 Cooperation to Prevent Disclosure of Confidential Information. Contractor shall use its best efforts to assist the City in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, Contractor shall advise the City immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will cooperate with the City in seeking injunctive or other equitable relief against any such person.

13.5.7 Remedies for Breach of Obligation of Confidentiality. Contractor acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the City, which damage may be inadequately compensable in the form of monetary damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available, to include, at the sole election of City, the immediate termination of this Agreement, without liability to City.

13.5.8 Surrender of Confidential Information upon Termination. Upon termination of this Agreement, including but not limited to expiration of the term, early termination or termination for convenience, Contractor shall, within five Days from the date of termination, return to City any and all Confidential Information received from the City, or created or received by Contractor on behalf of the City, that are in Contractor's possession, custody, or control. The return of Confidential Information to City shall follow the timeframe and procedure described further in this Agreement (Article 8).

13.5.9 Data Security. To prevent unauthorized access of City Data,

(a) Contractor shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, including all SaaS Services, (b) Contractor's Website, (c) Contractor's physical facilities, (d) Contractor's infrastructure, and (e) Contractor's networks.

(b) Contractor shall provide security for its networks and all Internet connections consistent with industry best practices, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs.

(c) Contractor will maintain appropriate safeguards to restrict access to City's Data to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor.

(d) For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., most current industry standard encryption for transport and storage, such as the National Institute of Standards and Technology's Internal Report 7977 or Federal Information Processing Standards [FIPS] 140-2 [Security Requirements for Cryptographic Modules] or FIPS-197 or successors, intrusion prevention/detection or similar barriers) and secure authentication (e.g., password-protected access to the City's Confidential Information and hosted City Data.

(e) For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City Data.

(f) City Data shall be encrypted at rest and in transit with controlled access.

(g) Contractor will establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect City Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, NIST Special Publication 800-18 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards, or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

(h) In performing its obligations under this Agreement, Contractor warrants to the City compliance with the following (as periodically amended or updated), as applicable:

- (i)** The California Information Practices Act/California Consumer Privacy Act (Civil Code §§ 1798, et seq);

- (ii) Relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the PCI DSS Cloud Computing Guidelines;

13.5.10 Data Privacy and Information Security Program. Without limiting Contractor's obligation of confidentiality as further described herein, Contractor shall establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of the City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the City Data; (iii) protect against unauthorized disclosure, access to, or use of the City Data; (iv) ensure the proper disposal of City Data; and, (v) ensure that all of Contractor's employees, agents, and subcontractors, if any, comply with all of the foregoing.

13.5.11 City's Right to Termination for Deficiencies. City reserves the right, at its sole election, to immediately terminate this Agreement, without limitation and without liability, if City reasonably determines that Contractor fails or has failed to meet its obligations under this Article 13.

13.5.12 Data Transmission. Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (e.g., HTTPS or SFTP or most current industry standard established by NIST). Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. Contractor is prohibited from accessing City Data from outside the continental United States.

13.6 Management of City Data and Confidential Information

13.6.1 Use of City Data and Confidential Information. Contractor agrees to hold City Data received from, or collected on behalf, of the City, in strictest confidence. Contractor shall not use or disclose City Data 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 Data outside the United States is subject to prior written authorization by the City. Access to City Data 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 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 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.

13.6.2 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than 30 Days, return all Data given to or collected by Contractor on City’s behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall within 10 Days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors’ environment(s), 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 Days of the purge. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88, or the most current industry standard.

13.7 SOC2 Audit Report. In lieu of SOC 2, Contractor shall provide to City, on an annual basis, an ISO 27001 Report, to be conducted by an independent third party (Audit Reports) (if Contractor is using a hosting service provider, Contractor shall provide such Audit Reports it receives from its service provider or providers) as follows: (a) the Audit Reports shall include a 365 day (12-month) testing period; and (b) the Audit Reports shall be available to City no later than 30 Days after they are received by Contractor. If Contractor receives a so-called “negative assurance opinion,” or the annual Audit Report finds a material data privacy or information security issue, Contractor shall notify City of such opinion within three Days of receipt by Contractor. Contractor shall implement reasonably required safeguards as identified by any audit of Contractor’s data privacy and information security program or promptly notify City in writing if Contractor is unable to implement mitigation measures to address the issue(s). Upon any such notification, City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

13.7.1 Audit of Contractor’s Policies. Contractor agrees to make its policies, procedures and practices regarding Data Security available to City, if needed, and agrees that City reserves the rights, including, but not limited to, making a site visit, scanning for malicious codes, and hiring a third-party to perform a security audit if City determines that the Audit Report is unsatisfactory.

13.7.2 Information Security Audits. Contractor must contract with an independent third party to perform yearly information security audits of their primary and backup Data Centers. The annual audits must include an outside penetration/vulnerability test, and internal penetration and vulnerability tests with the third party directly on the internal network. The summary results of the audits must be shared with the City. All audit findings must be remedied.

13.7.3 Audit Findings. Contractor shall implement reasonably required safeguards as identified by City or by any audit of Contractor's data privacy and information security program.

Article 14 Force Majeure

14.1 Liability. No Party shall be liable for delay in the performance of its obligations under this Agreement if and to the extent such delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, or any other cause beyond the reasonable control of such Party (a "Force Majeure Event"). In the case of a Force Majeure Event, Contractor shall immediately commence disaster recovery services as described in Section 14.4.

14.2 Duration. In a Force Majeure Event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two Days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

14.3 Effect. If a Force Majeure Event substantially prevents, hinders, or delays performance of the Services as critical for more than 15 consecutive Days, then at City's option: (i) City may terminate any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) City may terminate this Agreement without liability to City or Contractor as of a date specified by City in a written notice of termination to Contractor. Contractor shall not have the right to any additional payments from City for costs or expenses incurred by Contractor as a result of any Force Majeure Event that lasts longer than three Days.

14.4 Disaster Recovery. In the event of a disaster, as defined below, Contractor shall provide disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Appendix D hereto, or as otherwise set forth in this Agreement or any Statement of Work. Notwithstanding Section 14.1, a Force Majeure Event shall not excuse Contractor of its obligations for performing disaster recovery services as provided in this Section. In the event

that a disaster occurs and Contractor fails to restore the hosting services within 24 hours of the initial disruption to Services, City may, in its discretion, deem such actions to be a material default by Contractor incapable of cure, and City may immediately terminate this Agreement. For purposes of this Agreement, a “disaster” shall mean an interruption in the hosting Services or the inability of Contractor to provide City with the SaaS Application and hosting services for any reason that could not be remedied by relocating the SaaS Application and hosting services to a different physical location outside the proximity of its primary Data Center

Article 15 Appendices

15.1 Additional Appendices. The following appendices are attached and incorporated into this Agreement as though fully set forth herein and together form the complete Agreement between the Parties:

Appendices:

- A. Scope of Services
- B. SaaS Application and Hosted Services
- C. Calculation of Charges
- D. Disaster Recovery Plan
- E. Grant Terms

Article 16 MacBride And Signature

16.1 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.

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| <p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Lillian A. Levy Deputy City Attorney</p> | <p>CONTRACTOR</p> <p>Nomad Transit, LLC</p> <hr/> <p>Alex Lavoie Manager 114 Fifth Avenue, Floor 17 New York, NY 10011</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: 0000053952</p> |
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Appendix A Scope of Services

I. Background

The Bayview Community Shuttle Project (Project) is a pilot project funded by the California Air Resources Board (CARB) through their Sustainable Transportation Equity Project (STEP) Program to provide on-demand shuttle service for the Bayview-Hunters Point community. The Project responds to the following community needs identified in the Bayview Community Based Transportation Plan (adopted in 2020):

- Bring a community shuttle program back to Bayview-Hunters Point;
- Connect residents to regional transit, jobs, and other critical destinations;
- Create sustainable jobs in Bayview-Hunters Point;
- Improve mobility options, especially for low-income residents, youth, and seniors; and
- Community decision-making & community control.

The overarching purpose of the STEP Program is to increase transportation equity in disadvantaged and low-income communities throughout the state.

In order to achieve the goals of the Project, Contractor was selected to provide a turnkey microtransit on-demand shuttle service and mobile ride reservation application service for San Francisco's Bayview-Hunters Point neighborhood.

II. Description of Services

Contractor shall provide all technology and software, vehicles, supplies and materials, equipment, and labor and personnel, including, without limitation, drivers, supervisors, mechanics, and dispatchers, required to develop, launch, market, operate, manage, and maintain the Project for the contract term (collectively, the Services). Contractor's employees shall possess valid permits, licenses, approvals, certificates, and training, as required by applicable law; Contractor's drivers will be registered with the California Department of Motor Vehicles' Employer Pull Notice (EPN) Program. Contractor will obtain and maintain current for the contract term all insurance, permits, franchises, approvals, licenses, certificates, and other authorizations necessary to provide the Services.

Services Contractor shall perform has been organized into service classes as follows:

- A.** Project Development;
- B.** Service Planning and Design;
- C.** Service Operations and Management; and
- D.** Reporting and Evaluation.

A. Project Development

The Project Development service class includes tasks related to (1) Project Management, (2) Project Work Plan/Schedule, (3) Data Management, Reporting, Cybersecurity Plan, and Technology Requirements, and (4) Shuttle Software/Technology Solution, as described below.

1. Project Management

Contractor shall perform certain Project Management tasks, as described below.

- a. **Project Manager:** Provide a project manager that shall be dedicated full time to the Project and serve as Contractor's single point of contact for the SFMTA. The project manager shall be responsible for developing deliverables.
- b. **Project Meetings:** At a minimum, the following project meetings shall be required.
 - 1) **Kickoff Meeting:** Within 15 working days of the notice to proceed (NTP), Contractor shall provide an agenda for and attend kick-off meeting with the SFMTA and community partners from the Bayview-Hunters Point. At a minimum, agenda topics shall include Project requirements, roles, and responsibilities, and schedules for upcoming meetings and required participation.

Deliverable: (A.1.b.1) Kick-Off Meeting Agenda

- 2) **Community Congress Meetings:** Attend quarterly meetings of the Project's Community Congress, the oversight and decision-making body for implementation of the Project. Serve as a member in Community Congress' overall Project Steering Committee and the Community Shuttle Committee. Participation in the Project Steering Committee requires attendance at bi-annual planning meetings (mid- and end-of-year) to evaluate Project impacts and coordinate upcoming activities. Participation in the Community Shuttle Committee requires reporting on the Project's outreach & engagement efforts, implementation of Project's shuttle service, education and marketing efforts, and addressing feedback from customers and other members of the public about the Project.

Deliverable(s): (A.1.b.2) Attendance at Community Congress Quarterly Meetings
(A.1.b.3) Reports to Community Congress
(A.1.b.4) Attendance at bi-annual Project Steering Committee planning meetings

- 3) **Project Update Meetings:** Host regularly scheduled meetings to report on the Project's progress with respect to development and implementation, and coordinate with the SFMTA on upcoming, planned activities. At minimum, schedule and hold Project update meetings as follows: (a) once per week until the launch of revenue service for the Project; (b) once per week for the eight to

12 weeks following the launch of revenue service for the Project; and (c) once per month for the remainder of the contract term. (The SFMTA and Contractor may adopt a reduced meeting schedule if agreed to in writing.) Contractor shall document and track action items and provide meeting summaries after each meeting.

Deliverable(s): (A.1.b.5) Host Project Update Meetings
(A.1.b.6) Project Update Meeting Minutes

2. Project Work Plan and Schedule

Within 10 working days of NTP and before the Kickoff Meeting, Contractor shall submit to the SFMTA, for review and approval, a Work Plan and Schedule to implement the Project and commence revenue service. At minimum, the Work Plan and Schedule shall include:

- a. Project tasks (including any subtasks and individual activities) and schedule, including any of SFMTA's responsibilities;
- b. Pre-planning activities, required software/technology solution, materials and equipment, with lead time and training activities;
- c. A list of project deliverables due to the SFMTA and their corresponding due dates, including SFMTA review times, and variables that may impact schedule; and
- d. A quality plan for the Project detailing quality control and quality assurance activities.

Deliverable: (A.2) Project Work Plan and Schedule

3. Data Management, Reporting, Cybersecurity Plan, and Technology Requirements

Within 30 working days of NTP, Contractor shall submit to the SFMTA, for review and approval, a Data Management, Reporting, and Cybersecurity Plan for data Contractor will collect, manage, and share in connection with the Project. Contractor shall share all data collected with SFMTA and CARB upon request. See also Section II.D (Reporting and Evaluation Plan).

At minimum, the Data Management, Reporting, and Cybersecurity Plan shall include the following requirements:

- a. **Security:** Contractor's solutions shall be designed and built using security best practices, including test, development, and production. Contractor shall stay current on security best practices and implement such practices, as applicable, in SFMTA environments. Security best practices that must be implemented for the Project include:
 - 1) User authentication shall be handled by SFMTA Active Directory. SAML authentication will also be supported for cloud solutions. MFA is required to access all SFMTA assets.

- 2) Appliances or any embedded devices need to be hardened and must be fully patched. Patching should be automated or fully documented during implementation.
 - 3) All default passwords must be changed to adhere with the SFMTA Password Policy.
 - 4) Data transfers across the Intranet must be encrypted and ideally internal traffic should be encrypted if possible.
 - 5) Complete data flow diagrams must be provided showing all internal and external data transfers. Detailed diagrams must be provided for any firewall rules that include specific ports with destination IP addresses specified.
 - 6) SFMTA reserves the right to conduct security scans at any time and will prior to final acceptance.
- b. Servers:** Where applicable, all server configurations shall be integrated into an appropriate SFMTA IT datacenter and must be reviewed by and approved by SFMTA IT to ensure proper integration.
- 1) All server configurations shall be virtual, SFMTA currently uses VMWare for the virtual environment. Application-specific physical hardware is not supported or permitted.
 - 2) Operating systems must be current and supportable for the anticipated life of the application. Windows and Red Hat are our preferred operation systems.
 - 3) Security best practices will be applied to all servers.
 - a. Patching will be performed automatically on a monthly basis.
 - b. SFMTA will install our standard av and endpoint security solution. Vendor is responsible for providing file/folder exclusion and or special requirements.
 - c. Remote control or remote access will only be permitted using SFMTA approved methods that adhere to our policy.
 - d. Password complexity will be required and default passwords need to be reset. Accounts will be set up in Active Directory and local IDs will be discouraged and need to be approved by SFMTA.
- c. Databases:** Where applicable, all database configurations shall be integrated into SFMTA IT's database architecture and must be reviewed by and approved by SFMTA IT to ensure proper integration. Database-specific physical hardware is not supported or permitted.

- d. Middleware and Data Integration:** Where applicable, the SFMTA utilizes a middleware platform to ensure scalable and reusable data integrations between technology systems and to our data warehouse. Utilizing both RESTful services and messaging queues as appropriate for the project, the SFMTA IT expects integration points from vendors to REST APIs communicating over https with XML or JSON.
- e. GIS and Spatial Data:** The SFMTA requires submission of as-built and any other geospatial data in the WGS84 geo-referenced coordinate system for new or modified infrastructure. Accuracy and precision of geospatial submissions must be reviewed and approved by SFMTA IT to ensure integration into our geospatial data store.
- f. IP Networking:** Where applicable, any device attached to the SFMTA Enterprise Network shall be configured for IPv4 via DHCP. Manually configured IPv4 addresses will not be permitted. IPv6 is not supported at this time. Any reference to any SFMTA Enterprise Network-attached device shall be by hostname. Configuration of any and all software will refer to SFMTA Enterprise Network-attached devices by hostname. Reference to or use of IPv4 addresses will not be permitted.
- g. Third-Party Networks:** Where applicable, third-party independent networks are not supported or permitted on the SFMTA Enterprise Network. Third-party routers or firewalls will not be supported or permitted. All SFMTA devices utilizing IP over Ethernet technology shall be connected only to SFMTA owned and supported network equipment meeting the appropriate SFMTA IT hardware specification standards.

Deliverable: (A.3) Data Management, Reporting, and Cybersecurity Plan

4. Shuttle Software/Technology Solution

Within 30 working days of NTP, Contractor shall deliver to the SFMTA, for review and approval, a Shuttle Software/Technology Solution that supports demand-responsive shuttle service management, operations, analysis, and reporting. The Shuttle Software/Technology Solution shall support multilingual (Spanish and Cantonese) call center operations, as well as mobile applications and website for customer ride booking.

At minimum, the Shuttle Software/Technology Solution shall provide for the following:

- a. Features:** The Shuttle Software/Technology Solution shall include a mobile platform and website with the following features:
 - 1) Routing and dispatch of vehicles;
 - 2) Remote real time monitoring and analytics for service operations;
 - 3) Ride booking functionality that provides for advanced booking;
 - 4) Operator-facing application and website;

- 5) Customer-facing application and website;
- 6) Dashboards for analysis and reporting of service operations available to the SFMTA;
- 7) Application shall apply user experience (UX) and user interface (UI) principles;
- 8) Customizations for riders with limited use of smartphone technology;
- 9) Customizations for riders with advanced use of smartphone technology;
- 10) Application Programming Interface (API) enabled to connect with SFMTA applications and website; and
- 11) Integration of real time arrival information within the smartphone application for nearby transit routes (Muni, Bay Area Rapid Transit (BART), Caltrain).

Deliverable: (A.4.a.1) Completed software/technology solution

b. Data Collection: Data collected must include applicable fields from CARB’s STEP Implementation Grant Solicitation Appendix H: Data Collection Requirements, such as End User Experience (user demographics, number of unique users), Vehicle Specifications (vehicle and fueling equipment, purchase/lease cost), and Service Operation (trips taken, service hours and miles traveled by vehicle, average miles per kilowatt hour). The SFMTA and the Contractor will collaborate with CARB on finalizing the list of data to be collected and CARB must approve the final data collection plan.

Deliverable: (A.4.b.1) CARB approved final data collection plan

| Deliverables | |
|--------------|--|
| A.1.b.1 | Kick-off Meeting Agenda |
| A.1.b.2 | Attendance at Community Congress Quarterly Meetings |
| A.1.b.3 | Reports to Community Congress |
| A.1.b.4 | Attendance at bi-annual Project Steering Committee planning meetings |
| A.1.b.5 | Host Project Update Meetings |
| A.1.b.6 | Project Update Meeting Minutes |
| A.2 | Project Work Plan and Schedule |
| A.3 | Data Management, Reporting, and Cybersecurity Plan |
| A.4.a.1 | Completed software/technology solution |
| A.4.b.1 | CARB approved final data collection plan |

B. Service Planning and Design

The Service Planning and Design service class includes tasks related to (1) Service Planning, (2) Service Marketing, (3) Mobile Ride Reservation Application, (4) Website, (5) Multilingual Call Center for Ride Reservation, (6) Fare Payments and Integration, (7) Vehicle Leasing or Procurement, (8) Vehicle Branding, and (9) Charging/Storage Infrastructure & Maintenance Facility, as described below.

The community shuttle service must be a zero-emission, wheelchair-accessible, on-demand, dynamic ridesharing service in the Bayview Hunters Point neighborhood that improves access and connections to regional transit, community services, school, work, basic amenities, and job opportunities.

1. Service Planning

Within 45 working days of NTP, Contractor shall deliver to the SFMTA, for review and approval, a Shuttle Revenue Service Plan to define the operational parameters of the shuttle service. Contractor will work with the SFMTA and community residents to develop and finalize the Revenue Service Plan.

The Revenue Service Plan shall include the following revenue service inputs:

- a.** Geographic service area, including the selection of point destinations outside the immediate neighborhood;
- b.** Service days;
- c.** Hours of service;
- d.** Distance traveled to meet ride pick-up; and
- e.** Service frequency (targeted wait time for pickup).

The SFMTA has presented the following initial service plans to the community:

- a.** Geographic service area, including the geographic boundaries of the Bayview-Hunters Point Neighborhood (approximately 4.5 square miles);¹
- b.** Point destinations outside the immediate neighborhood, including San Francisco General Hospital, and 24th Street BART station;

¹ San Francisco Elections Citywide Neighborhood Map July 2022

(https://sfelections.sfgov.org/sites/default/files/Documents/Maps/Citywide%20Neighborhood%20Map%20July%202022_0.pdf)

- c. Service days and hours of Monday-Friday 7AM-7PM, Saturday-Sunday 10AM-6PM, including adjusted service on holidays;²
- d. Expected target pick up time of no more than 15 minutes;
- e. Travel up to 1-2 blocks (approximately ¼ mile) to a rider defined start or end point; and
- f. Accommodate riders of all ages, abilities, and purposes and provide door to door service to riders who may require extra assistance.

Contractor will work off the initial service plans above and provide insights on trade-offs and compromises between adjustments in the various inputs with respect to the project budget through facilitation of at least two community sessions to discuss a draft Revenue Service Plan and provide a forum for feedback.

At the conclusion of the service planning community exercise, Contractor will produce a service plan document for the Community Congress to review and adopt. This service plan document will include the proposed service area, hours of service, and service frequency.

After adoption of the Revenue Service Plan, Contractor may make minor service plan adjustments to improve service efficiency with the approval of the SFMTA Project Manager. Major service plan changes, as determined by the SFMTA Project Manager, including but not limited to changes to geographic service area, wait times, and service hours, will be brought for discussion at the quarterly Community Congress meetings for consideration and potential adoption. The major service plan change approval process will include the following:

- a. A justification for the change, including any shuttle service metrics;
- b. Presentation to the Community Shuttle sub-committee of the Community Congress for initial round of feedback; and
- c. Presentation to the Community Congress (including addressing feedback from sub-committee meeting) for consideration and potential adoption.

The Agency may also propose service plan changes to Contractor for evaluation and potential adoption. Any changes that Contractor does not adopt must be explained to the Agency.

Deliverable: (B.1) Finalized Shuttle Revenue Service Plan document

2. Service Marketing

Contractor shall perform certain Service Marketing tasks as described below:

² City and County of San Francisco Holidays (<https://sfgov.org/city-and-county-san-francisco-holidays>)

a. Outreach Plan – Within 45 working days of NTP, Contractor shall submit to the SFMTA, for review and approval, a comprehensive Communications, Outreach and Marketing Plan to drive awareness of the service and educate the public on how to use the service. The plan must be approved by the relevant Bayview-Hunters Point community-based organizations (CBOs) marketing partners and the Community Congress. The Bayview Community Shuttle has five CBO marketing partners: Hunters Point Family, Community Youth Center of San Francisco, MNC Inspiring Success – Evans Campus, the San Francisco African American Arts and Cultural District, and Amplify Impact. The Communications, Outreach and Marketing Plan shall include:

- 1) Methods to reach diverse and hard to reach community stakeholders;
- 2) Various marketing and promotional delivery programs, tools, content, messaging, and copy for use in any campaign delivery efforts;
- 3) Recommended distribution channels including ad locations and/or geo-targeting zones along with recommendations for digital and social media strategies. For those marketing deliverables that rely on the Agency’s own channels (i.e., the SFMTA’s website and social media pages), Contractor will work with the SFMTA’s Communications team to ensure that created content meets SFMTA brand standards and accessibility standards.
- 4) Information on how to:
 - a) Apply for a Clipper regional fare card and SFMTA fare discount programs for people with low-incomes;
 - b) Register for a customer account;
 - c) Download smartphone application;
 - d) Use the call center;
 - e) Pay for ride; and
 - f) Where to connect to SFMTA’s fixed transit routes.
- 5) A breakdown of estimated allocation of funds for customer promotion and referral programs

Deliverable: (B.2.a) Finalized Communications, Outreach and Marketing Plan

b. Marketing Materials and Activities – Contractor shall develop marketing materials best suited for engaging the customer base for the service. Materials should be co-branded with SFMTA and CARB logos and receive approval from SFMTA and CARB prior to release.

Given the new nature of this mobility service and the steep learning curve on how to use the service, the Contractor in consultation with the CBO marketing partners (Hunters Point Family, Community Youth Center of San Francisco, MNC Inspiring Success – Evans Campus, the San Francisco African American Arts and Cultural District, and Amplify Impact) shall host a minimum of two in-person events per year to develop community interest in the service, educate the community about the service, and receive feedback from customers. The following questions should be answered and discussed at the in-person events:

- 1) What is the Bayview Community Shuttle?
- 2) Where can the Bayview Community Shuttle take you?
- 3) Who is eligible to use the Bayview Community Shuttle?
- 4) How can the Bayview Community Shuttle accommodate customer needs (e.g., customers with limited English proficiency, no smartphone, or the unbanked)?
- 5) Why use the Bayview Community Shuttle?
- 6) What is the cost to use the Bayview Community Shuttle?
- 7) When can the Bayview Community Shuttle be used?

Deliverable: (B.2.b) Marketing materials

3. Mobile Ride Reservation Application

Within 60 working days of NTP, Contractor shall deliver to the SFMTA, for a review and approval, a fully functioning mobile ride reservation application. This application must meet these minimum functional requirements:

- a. Provide a simple, fast, and customer-friendly interface for ride reservations, managing accounts, and using additional features of the Mobile Ride Reservation Application.
- b. Applications must be available in the app stores and meet the following requirements:
 - 1) Applications must be developed according to standard mobile application interface guidelines;
 - 2) Contractor must both deploy and manage the applications in the Apple App Store and Google Play Store;
 - 3) Mobile Ride Reservation Applications must be backward compatible with previous versions of Android and iOS operating systems still supported by Apple and Google.
- c. Mobile Ride Reservation Applications must be able to accept the Clipper regional fare card as a method of payment.

- d. Be user-configurable and/or capable in multiple languages, including English, Chinese (Traditional), and Spanish versions at a minimum, to address SFMTA's customer language requirements and the City and County of San Francisco's Language Access Ordinance (LAO), with the ability to expand to more languages.

Deliverable: (B.3) Mobile ride reservation smartphone application

4. Website

Within 60 working days of NTP, Contractor shall deliver to the SFMTA, for review and approval, a website with the ability for customers to book rides, and that provides information about the shuttle service.

- a. The website shall have the following minimum functional requirements.
 - 1) Website content shall be adaptable to any standard electronic device, including desktops, laptops and mobile devices.
 - 2) Meet all American with Disabilities Act (ADA) guidelines (<http://www.w3.org/WAI/users/Overview.html>) for web and mobile accessibility, including utilizing built-in accessibility features on user devices.
 - 3) Be user-configurable and/or capable in multiple languages, including English, Chinese (Traditional), and Spanish versions at a minimum, to address SFMTA's customer language requirements and the City and County of San Francisco's Language Access Ordinance (LAO), with the ability to expand to more languages.

Contractor and SFMTA will mutually determine whether the website will be hosted on the SFMTA website or through a standalone website.

Deliverable: (B.4) Shuttle service website

5. Multilingual Call Center for Ride Reservation

By the start of revenue service operation, Contractor shall launch a multilingual call center to provide telephone information and reservation services for customers to obtain a shuttle ride. Within 10 working days of the start of revenue service, Contractor shall submit to the SFMTA, for review and approval, a document describing the standard operating procedures of the multilingual call center. The document shall describe how Contractor will provide or comply with the following requirements:

- a. Phone number and email address to contact the call center;
- b. Option for text messaging where customers will receive a prompt response to their inquiry during revenue service hours;
- c. Email option for customers to access and receive a response within 24-48 hours;

- d. Hours of the telephone reservation service shall align with the revenue service hours;
- e. Target pick up times to connect with an operator shall not exceed 15 minutes;
- f. Multilingual interpretation telephone services (Spanish and Cantonese language services at a minimum) for ride reservation and general information calls; and
- g. Process to transfer calls to and from the Agency's or City's call center (311). The Contractor will also work with the Agency's and City's call centers to develop a process by which the Agency and City will transfer calls to the Contractor's call center for inquiries that are best suited to the Contractor.

Deliverable: (B.5) Multilingual Call Center Standard Operating Procedures document

6. Fare Payments and Integration

Within 20 working days of NTP, Contractor shall deliver to the SFMTA, for review and approval, a fare structure to be aligned with comparable Muni fixed route service fares, with payment utilizing the Clipper regional fare card. Contractor will also provide payment options for unbanked customers. The SFMTA may utilize promotional fare incentives to attract ridership during the launch of revenue service. Contractor may also choose to provide promotional fare incentives outside of the Agency's promotional fare incentives at any point throughout the revenue service period.

The SFMTA will provide Contractor with handheld Clipper card readers to enable payment. Contractor shall ensure the safekeeping of this equipment and shall be responsible for replacement costs associated with loss or theft.

Deliverable: (B.6) Fare structure policy and promotions document

7. Vehicle Leasing or Procurement

Within 20 working days of NTP, Contractor shall deliver to the SFMTA, for review and approval, a list of all revenue fleet vehicles and their specifications. All revenue fleet Project vehicles, either purchased or leased, must be zero emission and meet all of the requirements provided in the [STEP Implementation Grant Solicitation Appendix E: Project Eligibility document](#).

There is no minimum fleet or vehicle size requirement, but Contractor must be able to meet the required revenue service hours and target pickup time as identified in the Service Plan document.

- a. **Minimum Vehicle and Equipment Requirements:** In addition to meeting the requirements in the STEP Implementation Grant Solicitation Appendix E: Project Eligibility document, Contractor's fleet shall meet the following requirements:
 - 1) A subset of the vehicle fleet shall be ADA compliant with a fleet size large enough to accommodate equivalent target pick up times provided to ambulatory customers.

- 2) Contractor shall maintain a sufficient number of vehicles on standby to accommodate instances where one or more vehicles are taken out of service for maintenance or other needs in order to maintain existing service level requirements.
- 3) All vehicles shall be equipped with a Global Position System (GPS). The GPS will provide time-stamps whenever vehicles arrive and depart designated shuttle stop locations. The GPS shall have alerts for speeding and prolonged stops as well as a Geo-fence feature that sends alerts when the equipment travels outside assigned territory or crosses into restricted zones. The GPS should be viewable via a website and the mobile ride application so that riders and SFMTA staff can log-on to the site and/or mobile application and see where a shuttle is at any particular time.

Deliverable: (B.7) Revenue service vehicles and specifications document

8. Vehicle Branding

The SFMTA will provide vehicle service identity to ensure integration with SFMTA’s existing brand and services. The Contractor will be responsible for outfitting vehicles with the provided graphics.

9. Charging/Storage Infrastructure & Maintenance Facility

Within 20 working days of NTP, Contractor shall deliver to the SFMTA, for review and approval, an identified site to be acquired via procurement or lease to store, charge, and perform maintenance on Project vehicles that is within a reasonable distance of the Bayview-Hunters Point revenue service area. The Contractor will provide tours of the facility when requested by the SFMTA.

Deliverable(s): (B.8a) Documentation of acquired facility
(B.8b) SFMTA tour of facility

| Deliverables | |
|--------------|---|
| B.1 | Finalized Shuttle Revenue Service Plan Document |
| B.2.a | Finalized Communication, Outreach and Marketing Plan |
| B.2.b | Marketing material |
| B.3 | Mobile ride reservation smartphone application |
| B.4 | Shuttle service website |
| B.5 | Multilingual Call Center Standard Operating Procedures Document |
| B.6 | Fare structure policy and promotions document |

| | |
|------|--|
| B.7 | Revenue service vehicles and specifications document |
| B.8a | Documentation of acquired facility |
| B.8b | SFMTA tour of facility |

C. Service Operations and Management

The Service Operations and Management service class includes tasks related to (1) Service Operations & Maintenance (O&M) Plan, (2) Service Safety Management Plan, (3) Personnel, and (4) Revenue Service Operation, as described below.

1. Service Operations & Maintenance (O&M) Plan

Within 20 working days of NTP, Contractor shall deliver to the SFMTA, for review and approval, an O&M plan for the shuttle service. At a minimum, the O&M plan should answer all the questions of who, what, where and when regarding operations and maintenance of the shuttle service. The O&M plan will identify training, operations, safety, monitoring, maintenance and security procedures and processes as well as handling of exceptions, emergencies, and recovery in a variety of scenarios. The plan shall at a minimum include:

- a. Boarding and alighting vehicle procedures, including procedures for boarding, alighting and securement of passengers using wheelchairs and others with disabilities who may need assistance;
- b. On-board security incidents procedures;
- c. Roadway incident and collision procedures;
- d. Interactions with passengers, shuttle operators, emergency response or law enforcement officials;
- e. Notification procedures for collisions involving Shuttle vehicles;
- f. Maintenance checklists and schedules;
- g. Quality Control procedures to evaluate schedule adherence, driver performance, confirming/resolving customer issues;
- h. Cleaning schedules and procedures; and
- i. Passengers with disabilities accommodation request procedures.

Deliverable: (C.1) Service Operations & Maintenance Plan

2. Personnel

a. Staffing

Contractor will provide sufficient staffing for all shifts on a daily basis including weekends and holidays and the required supervisory and maintenance personnel.

Work shall be performed only by trained personnel in the employment of Contractor.

Contractor will be responsible for all aspects of staff management, including hiring and union negotiation (if applicable). To the extent Contractor elects to employ drivers, managers, supervisors, and/or mechanics who are members of a labor union, it shall be Contractor's sole responsibility to meet any and all of its obligations under any collective bargaining agreement with any union representing these personnel.

1) Managers and Supervisors

Contractor must provide at least one full-time manager to oversee the operation of the shuttle service, as well as any necessary assistant managers or shift supervisors to ensure management staff is available during service and maintenance operation. These staff must provide management full time, and their schedules must overlap such that at least one manager/supervisor is available during service operation.

Contractor must provide at least one full-time maintenance supervisor to oversee the maintenance team of mechanics, cleaners and other related support staff.

Management staff must be able to handle incidents, manage personnel matters, respond appropriately to customer complaints, and address policy matters. Management staff must ensure smooth operation of the maintenance operation.

At least one management team member from the Proposer must have expert knowledge of the routing software and any other software product specified in this Scope of Work. There must also be at least one expertly trained backup for each software package. The expert and backup do not need to be the same person for all software packages. Any problems pertaining to Contractor's operation will be corrected to the satisfaction of the SFMTA immediately upon notice from the SFMTA to the manager or supervisor on duty.

2) Drivers

Contractor will train and employ drivers and each such driver will possess all of the certificates, permits, licenses, approvals and training required by all applicable local, state and federal laws and regulations to operate a shuttle bus. Drivers will be expected to assist elderly and disabled passengers, provide directions, and maintain a courteous, helpful, and professional demeanor at all times. Drivers shall inspect passes or other fare media presented by boarding passengers, and/or other relevant credentials.

a) Driver Training and Hiring

Contractor will work with the SFMTA through the City and County of San Francisco's Office of Economic and Workforce Development's CityDrive training program and CBO partners to hire newly graduated commercial

licensed drivers to operate revenue service vehicles. Two of the Project's CBO partners will operate a workforce development program for the duration of the Project to recruit members of the community to be shuttle drivers and to provide the necessary training to obtain the required licensing to operate the shuttles. Graduates of the program will be referred to Contractor for potential hiring on an on-going basis.

Contractor will also provide drivers with company specific training in accordance with ADA regulations in operation of vehicles and equipment, and safety and sensitivity toward persons with disabilities, before transporting passengers. Hired drivers will be considered employees of the Contractor and will receive union equivalent wages.

3) Call Center/Customer Service Representatives

Contractor will hire Call Center/Customer Service staff to provide customers ride booking assistance, answer questions, receive feedback, and provide wayfinding guidance.

4) Shuttle Bus Cleaners

Contractor will provide staff to clean and tidy Project vehicles on a daily basis.

5) Mechanics

Contractor will have an experienced maintenance staff in sufficient quantity to service the Project shuttle bus fleet while maintaining continuous revenue service. Maintenance staff must possess all certificates, licenses, permits, approvals, and training required by all applicable local, state and federal laws and regulations regarding driving, maintenance and repair of shuttle buses.

b. Personnel Training Plan

Within 20 working days of NTP, Contractor shall deliver to SFMTA, for review and approval, a training plan for employees and training materials and schedules.

Training must include, but is not limited to:

- 1) Knowledge of the standard operating procedures, including shuttle re-charging, emergency shut off, and other vehicle-specific training.
- 2) Any other job tasks assigned to the individual, including working knowledge of all electronic and other equipment required to perform the job in a first-class manner.
- 3) SFMTA-approved procedures in the event of operational problems.
- 4) Detailed customer service training to provide first-class service.
- 5) Techniques to sensitively assist disabled and elderly customers.

- 6) Shuttle bus safety, security, and emergency procedures.
- 7) Team building and team communications.
- 8) Diversity, Equity, and Inclusion.

Deliverable(s): (C.2.b.1) Personnel Training Plan
(C.2.b.2) Personnel Training Materials
(C.2.b.3) Personnel Training Schedules

3. Revenue Service Operation

Based on the results of the Project Development, Service Planning and Design phases, Contractor will operate the zero-emission, wheelchair-accessible, on-demand, ridesharing service in the Bayview Hunters Point neighborhood (Shuttle Service).

a. Compliance with Laws

Contractor shall, at all times throughout the term of the resulting Agreement, comply with all laws, statutes, municipal ordinances, rules, and regulations of public authority applicable to the operation of a Shuttle Service.

b. Performance Standards

Contractor shall maintain the following performance standards for the Shuttle Service:

- 1) Contractor's employees assigned to provide the Shuttle Services will behave in a professional manner and will be uniformed at all times, including a Contractor-issued photo identification badge, visible to riders at all times.
- 2) All Shuttles will be kept clean, orderly and presentable.
- 3) Contractor will perform driver checks both prior to hiring and regularly after date of hire. Prior to hiring, both criminal and driving records are checked. After hire, driving records will be checked on a quarterly basis.
- 4) All shuttles assigned and used in connection with the Shuttle Service will be equipped with two-way radios for communication purposes.
- 5) All incidents, including but not limited to accidents, complaints, vandalism, and threats will be clearly documented by Contractor in the course of business and the SFMTA Project Manager will be notified.
- 6) Shuttle drivers will not wear headphones, listen to music, nor use personal cell phones while operating vehicles.

7) Smoking shall not be permitted on the Shuttles at any time.

c. Accessible Vehicles and Service for Passengers with Disabilities

Contractor will provide service for customers who need additional assistance boarding or alighting vehicles and for customers who need vehicles that can accommodate mobility devices as defined by ADA guidance, including, but not limited to, wheelchairs, power wheelchairs, scooters, and walkers (Accessible Vehicle).

Contractor will ensure that target pick up times are equivalent for ambulatory customers and customers with disabilities requiring an Accessible Vehicle. Contractor will also adjust service parameters including distance traveled to meet ride pick-up and drop-off locations to accommodate customers requesting an Accessible Vehicle and to locations where trips specifically for Accessible Vehicles are more likely (e.g., hospitals).

| Deliverables | |
|--------------|---------------------------------------|
| C.1 | Service Operations & Maintenance Plan |
| C.2.b.1 | Personnel Training Plan |
| C.2.b.2 | Personnel Training Materials |
| C.2.b.3 | Personnel Training Schedules |

D. Reporting and Evaluation

The Reporting and Evaluation service class includes tasks related to (1) Reporting and Evaluation Plan, as described below.

1.Reporting and Evaluation Plan

Contractor shall perform certain Reporting and Evaluation Plan tasks, as described below.

- a. Performance Measures:** Within 30 working days of NTP, Contractor shall deliver to the SFMTA, for review and approval, an initial set of performance measures to establish expectations of revenue service.

Deliverable: (D.1.a) List of Performance Measures

- b. Dashboards:** Within 60 working days of NTP, Contractor shall deliver to the SFMTA, for review and approval, sample digital dashboards and reports to track performance measures. These dashboards will be provided on an on-going basis, either in real-time or through daily summaries. The dashboards must also provide the ability for SFMTA to download data offline into a spreadsheet compatible format.

Deliverable: (D.1.b) Data dashboards and SFMTA login accounts for data dashboards

- c. Period Reporting:** Contractor will also provide data performance summary reports on a monthly, mid-year, and end-of each performance year basis, as well as a Final Project Evaluation Report at the end of the Project. These reports will include analysis on trends (e.g., locations with frequent demand for pick-up and drop-offs, peak hour ridership, etc.) and provide recommendations for potential adjustments to the service plan and to performance measures. Prior to providing reports, Contractor shall meet with SFMTA staff to go over expectations and level of detail to be provided in the required reporting. Data collected must follow the requirements for the deliverable identified in Section II.A.4.b and include applicable fields from [CARB’s STEP Implementation Grant Solicitation Appendix H: Data Collection Requirements](#).

Deliverable(s): (D.1.c1) Monthly Performance Reports
 (D.1.c2) Mid-Year Performance Reports
 (D.1.c3) End of Performance Year Reports

Potential evaluation metrics may include but are not limited to:

| # | Metric | Category |
|----|---|----------|
| 1 | De-Identified Passenger ID | User |
| 2 | Demographics (age, income, race, gender identity) | User |
| 3 | Purpose of Travel (leisure, work, school, healthcare access, shopping, other) | Trip |
| 4 | Vehicle ID | Trip |
| 5 | Request pickup location (longitude/latitude) | Trip |
| 6 | Request drop-off location (longitude/latitude) | Trip |
| 7 | Request pick-up date & time (rounded to nearest minute) | Trip |
| 8 | Wait time from request to passenger pick up | Trip |
| 9 | Passenger distance traveled to meet shuttle pick up (miles) | Trip |
| 10 | Pick-up date & time (rounded to nearest minute) | Trip |
| 11 | Drop-off date & time (rounded to nearest minute) | Trip |
| 12 | Origin to Destination trip distance (miles) | Trip |
| 13 | Duration of each passenger trip (minutes) | Trip |
| 14 | Number of guests with requesting passenger (if any) | Trip |
| 15 | Shared Ride with a separate party (Yes/No) | Trip |
| 16 | Accessible Vehicle ride requested (Yes/No) | Trip |
| 17 | Accessible Vehicle ride provided (Yes/No) | Trip |
| 18 | Trip Outcome (completed, rider cancelled, driver cancelled, no show) | Trip |

| # | Metric | Category |
|----|--|----------------------------|
| 19 | Trip Cancellation or no-show timestamp (rounded to nearest minute) | Trip |
| 20 | Ride rating awarded by passenger (1-5 stars) | Trip |
| 21 | Method used by passenger to request pick-up (phone app vs call center vs online booking) | Trip |
| 22 | Payment method (Credit/Debit Card, Clipper Card, Cash, Promo Code) | Trip |
| 23 | Revenue Service Hours by Vehicle ID | Vehicle |
| 24 | Maintenance summary by vehicle (daily vehicle availability, summary of vehicle road failures) | Vehicle |
| 25 | Battery usage and charging hours | Vehicle |
| 26 | Number of calls received by call center (include number of callers requesting interpretation, by language) | Call Center |
| 27 | Call duration times | Call Center |
| 28 | Call waiting times before connection to customer service representative | Call Center |
| 29 | Number of rides dispatched through call center | Call Center |
| 30 | Average travel speed of trip (miles per hour) | Service/Efficiency Metrics |
| 31 | Average number of riders per hour | Service/Efficiency Metrics |
| 32 | Average Cost to provide revenue service by hour | Service/Efficiency Metrics |
| 33 | Distribution of Revenue trips by number of riders | Service/Efficiency Metrics |
| 34 | Revenue service hours | Service/Efficiency Metrics |
| 35 | Revenue service hours (empty shuttle with no riders) | Service/Efficiency Metrics |
| 36 | Revenue service vehicle miles traveled | Service/Efficiency Metrics |
| 37 | Revenue service vehicle miles traveled (empty shuttle with no riders) | Service/Efficiency Metrics |
| 38 | Ratio of Passenger Miles Traveled to Vehicle Miles Traveled | Service/Efficiency Metrics |
| 39 | Incident reports | Incident |
| 40 | Summary of service complaints by type | Complaints |
| 41 | Other metrics, as determined through the community engagement process | Other |

Data to follow the Mobility Data Specification³ (MDS) format passenger services mode where applicable.

| |
|--------------|
| Deliverables |
|--------------|

³ Open Mobility Foundation Data Specifications (<https://github.com/openmobilityfoundation/mobility-data-specification>)

| | |
|--------|--|
| D.1.a | List of Performance Measures |
| D.1.b | SFMTA login accounts for data dashboards |
| D.1.c1 | Monthly Performance Reports |
| D.1.c2 | Mid-Year Performance Reports |
| D.1.c3 | End of Performance Year Reports |

III. Services Provided by Attorneys

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

IV. Reports

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

V. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be Robert Lim, SFMTA Program Manager, Streets Division, Robert.Lim@sfmta.com.

Appendix B

SaaS Application and Hosted Services

- I. Description of the SaaS Application and Hosted Services**
- II. SaaS Data Centers**
- III. SaaS Maintenance Services**
- IV. City Responsibilities**
- V. Technical Support & Training**

I. Description of the SaaS Application and Hosted Services: “SaaS Application and Hosted Services” include the following services to support the SaaS Application and Software:

A. Software: Use of Contractor’s Software operating on hosted equipment located at Contractor’s facility and/or any Data Center as further outlined under Section II (SaaS Data Centers) of this Appendix B. This includes:

1. Routing and dispatch of vehicles;
2. Remote real time monitoring and analytics for service operations;
3. Ride booking functionality that provides for advanced booking;
4. Operator-facing application and website;
5. Customer-facing application and website;
6. Dashboards for analysis and reporting of service operations available to the SFMTA;
7. Application shall apply user experience (UX) and user interface (UI) principles;
8. Customizations for riders with limited use of smartphone technology;
9. Customizations for riders with advanced use of smartphone technology;
10. Application Programming Interface (API) enabled to connect with SFMTA applications and website; and
11. Integration of real time arrival information within the smartphone application for nearby transit routes (Muni, Bay Area Rapid Transit (BART), Caltrain).

B. Reserved. (Third-Party Software)

C. Remote Software: Contractor shall provide access to and use of a remote software tool for City management of Authorized Users, access rights and other similar role-based controls as they pertain to the SaaS Services. Method will be published through Contractor portal and be made available to Authorized Users with elevated privileges.

D. Back-Up of City's Data:

1. Contractor shall provide up to 48 months of on-line hourly data retention for SaaS Software operation and functionality.

2. Contractor shall provide incremental City Data backups at a minimum of every four hours to an off-site location other than the primary hosting center.

3. Contractor shall provide weekly, off-site backups with a duration that matches the agreed-upon backup schedule and retention to a location other than the primary hosting center. Off-site backups to include previous eight weeks.

E. SaaS Environments: The SaaS Application and Hosted Services shall be hosted in a certified and secure Tier-3 data hosting center.

1. A single Back-up Environment available as needed to serve as the backup or “failover” environment for the SaaS and Hosted Services.

F. Reporting: Contractor shall provide electronic notification within two hours of discovery and subsequent monthly reporting of any incidents or breaches that had occurred within the environment or to the hosted application. In the event of a breach, Contractor shall follow the procedures set forth in Section 13.2.5 of the Agreement.

G. Availability of SaaS Services: Contractor (or its Hosting Service contractor) shall host the **SaaS Services** on computers owned or controlled by Contractor (or its contractor) and shall provide the City with access to both a production environment with SaaS Application and data and a test environment with SaaS Application via Internet-access to use according to the terms herein.

1. Hosted System Uptime: Other than Scheduled SaaS Maintenance Services as outlined in Section III, emergency maintenance described below, Force Majeure as described in the Agreement and lack of Internet availability as described below, Contractor shall provide uptime to the SaaS Application and Hosted Service to achieve a 99.9999% Service Level Availability.

2. Scheduled SaaS Maintenance

A. Contractor shall conduct Scheduled SaaS Maintenance during the following hours: Saturdays between 12 AM (Pacific Time) and 8 AM (Pacific Time), with the same exclusions noted in subsection 1, above.

B. Scheduled SaaS Maintenance shall not exceed an average of four hours per month over a 12-month period except for major scheduled upgrades.

3. Unscheduled SaaS Maintenance. Contractor shall use commercially reasonable efforts to prevent more than one hour of continuous down time during Business Hours in any month for which unscheduled SaaS maintenance is required. If Contractor fails to meet this obligation for a period of three successive calendar months, Contractor shall furnish City with a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month).

4. Emergency Maintenance. If Force Majeure Events or emergencies arise or continue, Contractor shall be entitled to take any actions that Contractor, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the SaaS systems or the SaaS Software. Such emergency maintenance may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the SaaS Software by City is made available. Contractor shall endeavor to provide advance written notice of such emergency maintenance to City as soon as is reasonably possible.

5. Notice of Unavailability: In the event there will be more than 30 minutes down time of any SaaS or Hosted Service components for any reason, including, but not limited to Scheduled SaaS Maintenance or emergency maintenance, Contractor shall provide notice to users by posting a web page that indicates that the site is temporarily unavailable and to please come back later. Contractor shall also provide advanced e-mail notice to Robert.Lim@sfmta.com which will include at least a brief description of the reason for the down time and an estimate of the time when City can expect the site to be up and available.

H. Changes in Functionality. During the term of this Agreement, Contractor shall not reduce or eliminate functionality in SaaS Services. Where Contractor has reduced or eliminated functionality in SaaS Services, City, in its sole election, shall: (i) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees; or, (ii) determine the value of the reduced or eliminated functionality and Contractor shall immediately adjust the Services fees accordingly on a prospective basis. Where Contractor increases functionality in the SaaS Services, such functionality shall be provided to City without any increase in the Services fees.

II. SaaS Data Centers

A. Control: The method and means of providing the Services shall be under the exclusive control, management, and supervision of Contractor, giving due consideration to the requests of City. Contractor, or any previously approved subcontractor, shall provide the Services (including data storage) solely from within the continental United States and on computing and data storage devices residing in the United States.

B. Data Center Standards.

Contractor's Data Centers shall have fully redundant and diverse network paths to City endpoints. Data Centers shall be located in geographically different seismic zones characterized by the lowest predicted chance of damage as defined by the US Geological Survey Earthquake Hazards Program.

Environmental systems must monitor/detect temperature, humidity, fluid leaks, fire/smoke/particulate and have accompanying suppression systems. Fire suppression systems should be dry pipe. Power should be fully conditioned to avoid spikes and other aberrations that can damage equipment. Temporary power units, such as generators, must be in place to support SaaS Services in the event of a power outage for up to three calendar days, and fuel replenishment contracts must be in place to keep temporary power operational for longer periods.

C. Location: The location of the approved Data Centers that will be used to host the SaaS Application is maintained in the United States.

D. Replacement Hosted Provider: In the event Contractor changes the foregoing Hosted Provider, Contractor shall provide City with prior written notice of said change and disclose the name and location of the replacement Hosted Provider. The replacement Hosted Provider shall be a reputable Hosted Provider comparable to Contractor's current Hosted Provider, and said replacement Hosted Provider shall be located within the United States. The replacement Hosted Provider shall perform a SOC 2, Type 2 Report Audit Report at least annually, in accordance with Section 13.7 of this Agreement.

E. Notice of Change: If the location of the Data Center used to host the SaaS Application is changed, Contractor shall provide City with written notice of said change at least 60 Days prior to any such change taking place. Contractor shall disclose the address of the new facility, which shall be within the United States. The Data Centers referenced above are subcontractors that must be approved by City.

F. Subcontractors. Contractor shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without City's prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Contractor's use of subcontractors shall not relieve Contractor of any of its duties or obligations under this Agreement.

III. SaaS Maintenance Services.

A. The SaaS Software maintained under this Agreement shall be the SaaS Software set forth in Appendix B to this Agreement.

B. The following SaaS Maintenance Services are included as part of this Agreement:

1. Contractor Software Version Upgrades, Software Revisions and Patches. Contractor shall provide and implement all SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches to ensure: (a) that the functionality of the SaaS Software and Services, as described in the Documentation, is available to Authorized Users; (b) that the functionality of the SaaS Software and Services is in accordance with the representations and warranties set forth herein, including but not limited to, the SaaS Software and Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Documentation; (c) that the Service Level Standards can be achieved; and (d) that the SaaS Software and Services work with the non-hosted browser version.

- i. **Planning:** Contractor must assist the City with the planning and logistics of upgrades and updates.
- ii. **Technical Assistance:** Contractor must provide technical assistance regarding release notes, new functionality, and new application workflows.
- iii. **Deployment:** Deployment of major upgrades, revisions, or patches that add a new service to the SaaS Software will be mutually agreed upon between Contractor and City.
- iv. **Training.** Contractor must provide standard training using Contractor's upgrade tools and provide ongoing knowledge transfer to the City.

2. Reserved. (Third-Party Software Revisions)

C. **Response to SaaS Issues.** Contractor shall provide verbal or written responses to SaaS Issues identified by City in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times defined under Section V (Technical Support & Training) of this Appendix.

D. **SaaS Hardware:** Contractor shall use commercially reasonable efforts to ensure that all hardware (including servers, routers, and other related equipment) on which the SaaS Application is deployed are attached to back-up power systems sufficient to maintain the site's availability for so long as any power outage could reasonably be expected to occur, based on the

experience of Contractor at its deployment location and consistent with the Tier rating of the Data Center required under Section I.E. of this Appendix.

I. City Responsibilities

A. City shall provide Contractor with timely notification of any SaaS Issues or SaaS Software Errors by either of these methods:

1. Contacting Contractor's Customer Support will be designated during the Launch process.

2. By entering the problem on Contractor's Service Portal Notifications can be submitted through the City Portal. This is the preferred method by which to contact Contractor.

3. If City cannot readily access Contractor's portal, City may contact Contractor at the "800" number listed above.

B. Support for Problem Investigation. City shall support all reasonable requests by Contractor as may be required in problem investigation and resolution.

C. SaaS Incident Manager: Designation of Point of Contact. City shall assign an individual or individuals to serve as the designated contact(s) for all communication with Contractor during SaaS Issue investigation and resolution.

D. Discovery of SaaS Software Errors. Upon discovery of a SaaS Software Error, City agrees, if requested by Contractor, to submit to Contractor a listing of output and any other data that Contractor may require in order to reproduce the SaaS Software Error and the operating conditions under which the SaaS Software Error occurred or was discovered.

V. Technical Support & Training

A. 24x7 Technical Support: Authorized Users will make Technical Support requests 24/7 by submitting a request via Contractor's service desk web portal. The Technical Support staff shall manage requests based on the Incident Severity Level indicated below.

1. Defect Priority, Escalation, and Resolution: At the time of notification of a Defect by the Customer, Via will assign a severity and priority level as follows:

| Defect Level | Response Service Level | Diagnosis Service Level | Resolution Service Level |
|--|--|---|---|
| Severity 1 – the Via Solution is completely inoperative. | Response within 30 minutes of notification of Defect. | Diagnosis of Defect complete within 2 hours of notification of Defect. | Resolution or workaround no later than 6 hours of notification of Defect. |
| Severity 2 - loss of documented material functionality or features such that all or a substantial portion of the Via Solution cannot be used in production without difficulty or adverse impact on Customer’s operations. | Response within 1 hour of notification of Defect. | Problem Diagnosis complete within 6 hours of Problem Report. | Resolution no later than 3 days following notification of Defect. |
| Severity 3 - loss of documented material functionality or features but the Via Solution can still be used in production without adverse impact on Customer’s operations. | Response within 24 hours of notification of Defect (this Service Level shall not apply to Defects downgraded to Severity 4). | Problem Diagnosis complete within 2 Business Days of notification of Defect (this Service Level shall not apply to Defects downgraded to Severity 4). | Resolution within 5 Business Days following notification of Defect. |
| Severity 4 - a Defect that does not impact the ability or level of effort to use the VIA Solution, including any incompatibility discovered with another product that must be used in the same environment as the VIA solution. | Response within one Business Day. | Problem Diagnosis complete within 10 Business Days of Problem Report. | Resolution will be provided in next periodic maintenance release. |

The SFMTA, within 24 hours of finding or being notified of a Defect, will inform Via, providing details of the fault and any error messages, symptoms and diagnostic information as appropriate.

If the Defect is relating to a specific rider, driver or operator, the SFMTA should provide Via with full details, including where applicable, their mobile device, make and model, operating system name and version and details of the Defect experienced.

Via may also request further details regarding the Defect.

The SFMTA is responsible for ensuring that their staff are familiar with this SLA assessment of priorities and the points of contact.

2. Uptime: Via will provide an uptime of 99.9%. All work for the purposes of planned outages for maintenance, upgrades and related reasons, will take place outside of service hours whenever possible. Planned outages will be notified via email and, wherever possible, with 24 hours' notice.

3. Mobile Device Availability: In the event that a Rider or Driver experiences a Defect affecting their mobile device specifically, Via will use its own facilities to seek out an identical or similar device with which to reproduce and diagnose the Defect.

In the event that such a device cannot be found in Via's device library, SFMTA may, at its discretion request that Via take reasonable steps to source an appropriate test device via their mobile network provider.

4. Third Party Content: The Via Solution includes certain Third Party Content. In the event that elements of the Via Solution fails due to such Third Party Content, Via shall instruct the relevant third party (e.g. Amazon AWS) to replace or repair the appropriate component. Via should use all reasonable endeavors to outline the nature of the fault and seek the quickest possible resolution. Via shall oversee and coordinate all dealings with any third parties with respect to resolving any issue caused by such third party's component.

5. Service Escalation: In the event of a Severity Level 1 issue that is not resolved sufficiently quickly as determined by the aforementioned agreed upon response times, City may escalate the problem to Contractor's Vice President of Partnerships.

6. Root Cause Analysis: Following the resolution of a Severity Level 1 OR Level 2 incident, Contractor will share in writing with City a post-mortem detailing the cause of the failure, the actions Contractor took to resolve the failure, and actions Contractor plans to take to prevent such failure from recurring.

Appendix C Calculation of Charges

Contractor shall perform the Services described in this Agreement, and any ancillary administrative tasks necessary to perform the Services, in exchange for payment by the SFMTA for (1) completed deliverables; and (2) reaching the Monthly Revenue Service Hours Target.

1. Completed Deliverables

The SFMTA shall compensate the Contractor on a flat fee basis for completing the below deliverables. Contractor will be able to invoice at the price specified on a monthly basis for completed deliverables in the following table:

| Deliverable | Description | Unit | Completed Deliverable Fee |
|--------------------|--|-------------|----------------------------------|
| A.1.b.1 | Kick-off Meeting Agenda | Flat Fee | \$ 150.00 |
| A.1.b.2 | Attendance at Community Congress Quarterly Meetings | Flat Fee | \$ 500.00 |
| A.1.b.3 | Reports to Community Congress | Flat Fee | \$ 250.00 |
| A.1.b.4 | Attendance at bi-annual Project Steering Committee planning meetings | Flat Fee | \$ 500.00 |
| A.1.b.5 | Host Project Update Meetings | Flat Fee | \$ 200.00 |
| A.1.b.6 | Project Update Meeting Minutes | Flat Fee | \$ 100.00 |
| A.2 | Project Work Plan and Schedule | Flat Fee | \$ 2,500.00 |
| A.3 | Data Management, Reporting, and Cybersecurity Plan | Flat Fee | \$ 1,500.00 |
| A.4.a.1 | Completed software/technology solution | Flat Fee | \$ 7,500.00 |
| A.4.b.1 | CARB approved final data collection plan | Flat Fee | \$ 250.00 |
| B.1 | Finalized Shuttle Revenue Service Plan Document | Flat Fee | \$ 1,500.00 |
| B.2.a | Finalized Communication, Outreach and Marketing Plan | Flat Fee | \$ 2,500.00 |
| B.2.b | Marketing material | Flat Fee | \$ 5,000.00 |
| B.3 | Mobile ride reservation smartphone application | Flat Fee | \$ 5,000.00 |
| B.4 | Shuttle service website | Flat Fee | \$ 2,500.00 |
| B.5 | Multilingual Call Center Standard Operating Procedures Document | Flat Fee | \$ 500.00 |
| B.6 | Fare structure policy and promotions document | Flat Fee | \$ 500.00 |
| B.7 | Revenue service vehicles and specifications document | Flat Fee | \$ 76,800.00 |
| B.8a | Documentation of acquired facility | Flat Fee | \$ 100.00 |
| B.8b | SFMTA tour of facility | Flat Fee | \$ 150.00 |
| C.1 | Service Operations & Maintenance Plan | Flat Fee | \$ 75,000.00 |
| C.2.b.1 | Personnel Training Plan | Flat Fee | \$ 1,000.00 |

| Deliverable | Description | Unit | Completed Deliverable Fee |
|--|--|-------------|----------------------------------|
| C.2.b.2 | Personnel Training Materials | Flat Fee | \$ 1,000.00 |
| C.2.b.3 | Personnel Training Schedules | Flat Fee | \$ 500.00 |
| D.1.a | List of Performance Measures | Flat Fee | \$ 250.00 |
| D.1.b | SFMTA login accounts for data dashboards | Flat Fee | \$ 250.00 |
| D.1.c1 | Monthly Performance Reports | Flat Fee | \$ 750.00 |
| D.1.c2 | Mid-Year Performance Reports | Flat Fee | \$ 1,500.00 |
| D.1.c3 | End of Performance Year Reports | Flat Fee | \$ 1,750.00 |
| Total Not-To-Exceed Amount for Completed Deliverables | | | \$ 190,000.00 |

2. All-Inclusive Monthly Revenue Service Costs

Monthly Revenue Service costs shall cover all ongoing operational costs, including, but not limited to, all costs associated with operating revenue service, technology costs, maintaining shuttle vehicles, operating a storage facility, providing customer service, marketing the service and providing data analysis/reporting.

Monthly Revenue Service costs will be compensated on a per Vehicle Hour basis, targeting a total monthly payment of \$172,999.63. A vehicle hour is defined as the start to the end of driver shifts, which includes:

- Able to be reserved by a passenger for a ride
- On the way to picking up or dropping off a passenger
- Carrying a passenger who has reserved a ride in the vehicle
- Stopped for the shuttle operator to assist the passenger and their belongings to get on or off the vehicle
- Charging/re-fueling a vehicle
- Incidents during revenue service that require a vehicle to be stopped as a result of mechanical or on board issues
- Operator breaks

The following actions do not count towards a vehicle hour:

- Maintenance performed on a vehicle
- Driver training
- Pre- and post- trip inspections
- Year 1 (July 2024 - February 2025; 6 eTransit WAVs in operation): \$108.48 per vehicle hour
- Year 2 (March 2025 – March 2026; 8 eTransit WAVs in operation): \$106.25 per vehicle hour

The Monthly Revenue Service Target shall be revenue service Monday-Friday 7 am to 7 pm, and Saturday-Sunday 10 pm to 6 pm.

Contractor will be paid in full, at a monthly value listed below. If the Monthly Revenue Service Hours Target hours are not met or are exceeded, Contractor will be paid proportionally for the number of revenue service hours provided divided by the Monthly Revenue Service Hours Target. As an example, if the Contractor only provides 80% of the Monthly Revenue Service Hours, 20% less than the target, the Contractor will be paid 8/10 of the Monthly Revenue Service Cost Target cost. Contractor shall notify City before exceeding Monthly Revenue Service Hours Target. Contractor will not exceed the total revenue service cost over 24 months of service.

| Description | Monthly Revenue Service Target Cost | Monthly Revenue Service Target Hours | Total Revenue Service Cost Not-to-Exceed Amount (Monthly Costs x 24 Months of Revenue Service) |
|---|--|---|---|
| Monthly Cost to Provide Revenue Service | \$172,999.63 | Year 1: 1594 Year 2: 1628 | \$ 4,151,991.04 |

Adjustment of the above Monthly Revenue Service Hours Target after adoption of the final Shuttle Revenue Service Plan (Deliverable B.1) shall be effectuated by modification of this Calculation of Charges per Section 11.5 of the Agreement.

If this Agreement is extended under Section 2.2 of the Agreement, Monthly Revenue Service Costs for Option Years 1 and 2 shall be based on the cost above.

Appendix D Disaster Recovery Plan

SaaS provider shall provide a business continuation strategy that can be implemented in the event of a catastrophic failure at the hosting primary site. Such a strategy should provide how quickly the backup site will be live and function, e.g., 48 hrs. The business continuity strategy must include documented drills. The first drill must happen within 2 months of contract signing and then once per year thereafter. The drill plans, action items and project plan for follow-ups must be shared with the City.

Contractor shall maintain a high availability configuration in the primary data center, with a mirrored instance of the SFMTA production system and supporting infrastructure in the secondary data center. Contractor shall maintain a standard procedure that governs the management of business continuity events. A disaster recovery test plan must be reviewed and exercised at least annually. Upon reasonable notice from the SFMTA, disaster recovery testing documentation shall be made available to the SFMTA. Contractor will provide the SFMTA's Chief Technology Officer with access to review business continuity and disaster recovery plan.

Contractor shall provide the SFMTA with a business continuity strategy and disaster recovery plan and procedures that can be implemented in the event of a catastrophic failure at the primary hosting site. Such a strategy should provide how quickly the secondary site will be available to Authorized Users. The business continuity strategy must include drills and exercises to test the readiness to execute the disaster recovery plan. If requested, the first drill must happen within six months of contract signing and then once per year thereafter. The drill plans, action items and project plan for follow-ups must be shared with the SFMTA.

Appendix E
Grant Terms