

THIS PRINT COVERS CALENDAR ITEM NO.: 11

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transit

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Contract No. SFMTA-2024-20 with ETC Institute (ETC) to conduct the 2024 Muni Onboard Survey, required by the Federal Transit Administration (FTA) in order to comply with Title VI of the Civil Rights Act of 1964, in the amount of \$1,829,232 and for a two-year term.

SUMMARY:

- As a federally funded agency, the SFMTA is required to collect travel behavior and demographic data for its Municipal Railway (Muni) transit system at least once every five years pursuant to FTA Circular 4702.1B. Given the COVID-19 pandemic and its impacts, a survey has not been conducted since 2017.
- For timing, efficiency and cost considerations, the SFMTA used the Metropolitan Transportation Commission's (MTC) 2023 Transit Passenger Surveying Services Bench competitive procurement and directly selected ETC Institute from five pre-qualified vendors who submitted statements of qualifications in response to MTC's request for qualifications. ETC was selected by the SFMTA due to their work on the 2016-2017 onboard survey and their demonstrated capacity to handle the complexity of Muni's multimodal, 24-hour transit network.
- San Francisco Administrative Code Section 21.16 permits the SFMTA to make purchases under the terms established by another agency's competitive procurement process upon a finding that the procurement is in the City's best interests.
- The Contractor will plan, coordinate, and conduct an onboard intercept survey, primarily in-person, of SFMTA's Muni riders, collecting statistically significant data and examining ridership at different times periods about customer travel patterns, income levels, ethnic background, language proficiency, and fare media usage both on a temporal and geographic basis. The Contractor shall produce a final report that includes a discussion of the survey results and relevant high-level data summaries.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract with ETC Institute

APPROVALS:

DIRECTOR  _____

SECRETARY  _____

DATE

November 29, 2023

November 29, 2023

ASSIGNED SFMTAB CALENDAR DATE: December 5, 2023

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PURPOSE

To authorize the Director of Transportation to execute Contract No. SFMTA-2024-20 with ETC Institute (ETC) to conduct the 2024 Muni Onboard Survey, required by the Federal Transit Administration (FTA) in order to be in compliance with Title VI of the Civil Rights Act of 1964, in the amount of \$1,829,232 and for a two-year term.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action supports the following SFMTA Strategic Plan Goals:

- Goal 1: Identify and reduce disproportionate outcomes and resolve past harm towards marginalized communities.
- 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.

This action supports the following Transit First Policy 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.

DESCRIPTION

Background

As a recipient of federal funds through the Federal Transit Administration (FTA), the SFMTA is required to conduct a demographic analysis of its ridership at least once every five years pursuant to FTA Circular 4702.1B, "Title VI Requirements and Guidelines for FTA Recipients." Information to be collected includes travel patterns, fare usage by fare type, and customer demographics, including race, color, national origin, English proficiency level, language spoken at home, and household income.

Once retained, the Contractor will plan, coordinate, and conduct an onboard intercept survey, primarily in-person, of SFMTA's Muni riders. The Contractor will collect statistically significant data and examine ridership at different time periods about customer travel patterns, income levels, ethnic background, language proficiency, and fare media usage both on a temporal and geographic basis. Riders will be surveyed on all routes and modes of transit vehicles, on

platforms, and by telephone as necessary. The Contractor shall produce a final report that includes a discussion of the survey results and relevant high-level data summaries.

The two goals of this effort are 1) to satisfy FTA's regulatory requirements related to Title VI of the 1964 Civil Rights Act, and 2) to collect and analyze updated ridership data that will inform the SFMTA's equity strategy, service planning, and fare and service change equity analyses, particularly considering ridership changes since the COVID-19 pandemic. The results of this survey will provide SFMTA the ridership data necessary to ensure current and future service planning efforts will not have a discriminatory impact.

The SFMTA's demographic data and travel patterns are typically gathered through a regional onboard survey led by the Metropolitan Transportation Commission (MTC). The SFMTA partnered with MTC to sponsor the last onboard survey, which was conducted by ETC Institute in 2016-2017. Due to the COVID-19 pandemic, the SFMTA was unable to conduct an onboard survey in the last five years and therefore has no updated demographic information to perform equity analyses of proposed fare and service changes, the primary purpose of which is to determine whether the planned changes will have a disparate impact on the basis of race, color, or national origin, as well as informing other planning work such as trip purpose and origin/destination pairs.

Procurement

For timing, efficiency and cost considerations for this surveying effort, the SFMTA used the Metropolitan Transportation Commission's (MTC) 2023 Transit Passenger Surveying Services Bench competitive procurement and directly selected ETC Institute from five pre-qualified vendors who submitted statements of qualifications in response to MTC's request for qualifications. Under San Francisco Administrative Code section 21.16(b) and Charter section 8A.102(b)1, the SFMTA may use the competitive procurement process of any other public agency when the Director of Transportation determines that: (i) the other agency's procurement process was competitive or the result of a sole source award; and (ii) the use of the other agency's procurement would be in the City's best interests. Utilizing the MTC's Surveying Services Bench Procurement met both requirements.

On June 29, 2023, MTC issued a Request for Qualifications (RFQ) for the 2023 Transit Passenger Surveying Services – Cycle 1 Consultant Bench (Bench), inviting firms to submit a Statement of Qualifications (SOQ) for transit data collection and analysis. Staff hosted a virtual pre-proposal conference on July 6, 2023, that was attended by twenty-three individuals representing 16 firms. As of July 31, 2023, the deadline for submission of SOQs, MTC received SOQs from 5 firms. All five SOQs were evaluated. ETC was among the top selected firms to establish MTC's bench. The SFMTA selected ETC from the MTC bench due to their prior work conducting the SFMTA's 2016-2017 onboard survey and their demonstrated capacity to handle the complexity of its multimodal, 24-hour transit network.

The SFMTA will also see a savings in the cost of the procurement by using the MTC Bench. The cost of negotiating with the competitively selected contractor ETC is significantly lower than the

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cost of completing a stand-alone procurement and negotiating rates with the firm. Furthermore, partnering with MTC on the competitive RFQ process means that not only did both agencies engage in a competitive, regional process to identify the best firms for this work, but it also resulted in expediting the overall process by reducing parallel efforts by MTC and MTA to identify consultants for this work. Combined, the competitive procurement and realized time and cost savings support the conclusion that using ETC for this survey effort is in the best interests of the City.

SFMTA staff has negotiated an agreement with ETC for a fixed price of \$1,829,232. Under that agreement, the Contractor will plan, coordinate, and conduct an onboard intercept survey, primarily in-person, of SFMTA's Muni riders. The Contractor will collect statistically significant data and examine ridership at different times periods about customer travel patterns, income levels, ethnic background, language proficiency, and fare media usage both on a temporal and geographic basis. Riders will be surveyed on all routes and modes of transit vehicles, on platforms, and by telephone as necessary. The Contractor shall produce a final report that includes a discussion of the survey results and relevant high-level data summaries.

Earlier collection and analysis of onboard demographic data will assist the agency in advancing equity in transit service through the Title VI compliance requirements as well as helping to inform the SFMTA's Muni Equity Strategy program and the agency's Racial Equity Policy. These programs and policies complement the FTA's Title VI requirements and as a whole inform decision-making in planning transit service.

STAKEHOLDER ENGAGEMENT

In preparation of contracting, this project went through the Civil Service Commission to ensure this is a proper use of outsourcing from City staff. This project was approved by the Civil Service Commission at their October 2, 2023 hearing. As part of the scope of work, the Contractor will utilize an outreach program to inform customers and SFMTA employees regarding the surveying effort, including providing information and survey opportunities in languages other than English. Survey information will be included in multiple languages, including access to a call center where interpreters will work with survey participants in their language of choice.

ALTERNATIVES CONSIDERED

No other alternatives were considered to complete the 2024 Onboard Survey. The SFMTA does not currently have staffing resources to conduct this type of work, which will occur every 5 - 10 years and requires extensive staffing for a limited time period to survey the targeted 5% of current on-board ridership.

While SFMTA staff briefly looked into issuing a separate solicitation for the surveying services, it was determined that accessing MTC's pre-qualified, competitively established bench would allow the SFMTA to work through the contracting and approval processes at a far quicker rate and far more efficiently. Using the MTC bench enables the SFMTA to meet the goal of

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collecting demographic data beginning in early 2024. The agency would have had to wait until fall 2024 if a separate competitive procurement process was pursued. Procuring the onboard surveying services using the cooperative purchasing agency's contract will expedite the process for SFMTA to get mission critical data related to Title VI compliance, service planning, and equity analyses through MTC's existing competitive process.

FUNDING IMPACT

This contract will be funded by the Controller's Office City Services Auditor Work Order with SFMTA. The CSA Work Order with SFMTA is a Charter-mandated set-aside and this use of funds meets the overall mission and mandate of CSA. CSA work performed on behalf of the SFMTA was put on hold during COVID, leading to a carryforward balance sufficient to fund this one-time critical funding need. The contract amount of \$1.8M accounts for approximately 69% of the carryforward balance and 33% of the total work order balance.

ENVIRONMENTAL REVIEW

On November 15, 2023, the SFMTA, under authority delegated by the Planning Department, determined that securing the services of a consultant in order to conduct the 2024 Muni Onboard Survey is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment. A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are necessary.

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

RECOMMENDATION

Staff recommends that the SFMTA Board authorize the Director of Transportation to execute Contract No. SFMTA-2024-20 with ETC Institute (ETC) to conduct the 2024 Muni Onboard Survey, required by the Federal Transit Administration (FTA) in order to be in compliance with Title VI of the Civil Rights Act of 1964, in the amount of \$1,829,232 and for a two-year term.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Federal Transit Administration (FTA) Circular 4702.1B requires that the San Francisco Municipal Transportation Agency (SFMTA) conduct an onboard survey at a minimum once every five years in order to collect demographic data on its ridership to determine who is benefitting from federally programs and services and in order to conduct equity analyses on proposed fare and service changes; and,

WHEREAS, The most recent survey was conducted in 2016-2017 by ETC Institute, in partnership with the Metropolitan Transportation Commission (MTC); and,

WHEREAS, The COVID-19 pandemic prevented onboard survey work being conducted in the prior five years and therefore the agency is without updated demographic information with which to inform its transit planning activities, federally mandated equity analyses of proposed fare and service changes and service monitoring exercises, among other activities; and,

WHEREAS, Under San Francisco Administrative Code section 21.16(b) and Charter section 8A.102(b)1, the SFMTA may use the competitive procurement process of any other public agency when the Director of Transportation makes a determination that: (i) the other agency's procurement process was competitive or the result of a sole source award; and (ii) the use of the other agency's procurement would be in the City's best interests; and,

WHEREAS, On June 29, 2023, MTC issued a Request for Qualifications (RFQ) for the 2023 Transit Passenger Surveying Services – Cycle 1 Consultant Bench (Bench), inviting firms to submit a Statement of Qualifications (SOQ) for transit data collection and analysis; and,

WHEREAS, Accessing the MTC Bench will allow the SFMTA to proceed as quickly and as efficiently as possible with onboarding a Contractor to conduct the 2024 Onboard Survey, anticipated to begin in early 2024 instead of projected fall 2024 should the SFMTA have to initiate an independent competitive procurement process; and,

WHEREAS, ETC Institute conducted the SFMTA's 2016-2017 onboard survey, thereby demonstrating its ability to handle the complexity of our multimodal, 24-hour transit network; and,

WHEREAS, SFMTA staff has negotiated an agreement with ETC Institute under the MTC Bench procurement to meet the requirements of FTA Circular 4702.1B, "Title VI Requirements and Guidelines for FTA Recipients," by conducting an extensive onboard survey; and,

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

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2024-20 with ETC Institute (ETC) to conduct the 2024 Muni Onboard Survey, required by the Federal Transit Administration (FTA) in order to comply with Title VI of the Civil Rights Act of 1964, in the amount of \$1,829,232 and for a two-year term.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of December 5, 2023.

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

ETC Institute

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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
ETC Institute
Contract No. SFMTA-2024-20**

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

Recitals

A. The SFMTA wishes the services of a consulting firm to provide onboard customer surveying services.

B. This Agreement utilizes the Metropolitan Transportation Commission's (MTC) competitive procurement process for 2023 Transit Passenger Surveying Services Bench as permitted by San Francisco Administrative Code Chapter 21.16 pursuant to which City selected Contractor as the highest qualified contractor from the pre-qualified bench.

C. There is no Local Business Enterprise (LBE) subcontracting participation requirement for this Agreement. Contractor is strongly encouraged to utilize, to the extent possible, the DBE/SBE subcontractor(s) that are part of its team under the MTC 2023 Transit Passenger Surveying Services Bench.

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

D. The City's Civil Service Commission approved Contract number 32820-23/24 on October 2, 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 “**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.

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

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

1.4 “**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, as well as Confidential Information.

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

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

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

1.8 “**Contractor**” or “**Consultant**” means ETC Institute, 725 W. Frontier Lane, Olathe, KS 66061.

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

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

1.11 “**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 B.

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

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

1.14 “**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.

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

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

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

1.18 “**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.

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

Article 2 Term of the Agreement

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

Article 3 Financial Matters

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

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

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

and the Parties having modified this Agreement as provided in Section 11.5 (Modification of this Agreement).

3.3 Compensation

3.3.1 Calculation of Charges. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed (including 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 One Million, Eight Hundred Twenty-Nine Thousand, Two Hundred Thirty-Two Dollars (\$1,829,232). 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 Reserved. (LBE Payment and Utilization Tracking System).

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.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not 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 Reserved. (Payment of Prevailing Wages).

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform.

4.1.1 MTC Cooperative Use Agreement. Contractor agrees to perform the services in accordance with the terms and conditions of Appendix A: the Metropolitan Transportation Commission’s Consultant Bench: 2023 Transit Passenger Surveying Services Bench (“MTC Cooperative Use Agreement”). The MTC Cooperative Use Agreement consists of the following documents, which are incorporated by reference as though fully set forth herein:

- A1: MTC Administration Committee’s Approval of Consultant Bench: 2023 Transit Passenger Survey Services Bench
- A2: RFQ for 2023 Transit Passenger Surveying Services Bench
- A2.1: RFQ Appendix D-1 – MTC Standard Contract
- A2.2: RFQ Questions and Answers No. 1
- A2.3: RFQ Questions and Answers No. 2
- A3: ETC Institute Proposal for 2023 Transit Passengern Survey Services Bench
- A3.1: ETC Institute Proposal Resource Rate Schedule.

This Agreement is subject to the terms and conditions of the MTC Cooperative Use Agreement and is intended to supplement, but not change or otherwise modify the terms and conditions set forth in Appendix A.

4.1.2 Scope of Services. Contractor agrees to perform the Services stated in Appendix B (Scope of Services). Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix B, unless Appendix B is modified as provided in Section 11.5 (Modification of this Agreement).

4.2 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.

4.3 Subcontracting

4.3.1 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.

4.3.2 Contractor will not employ subcontractors.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses

4.4.1 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.

4.4.2 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.

4.5 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.

4.6 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.

4.7 Reserved. (Liquidated Damages).

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 \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 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) **Reserved. (Technology Errors and Omissions Liability Coverage).**

(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.

(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.

(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. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

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

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (PAYMENT) OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

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

Article 7 Payment of Taxes

7.1 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. 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:

3.5	Submitting False Claims
4.5	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.10	Alcohol and Drug-Free Workplace
10.13	Working with Minors
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 Non-Waiver of Rights. The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration

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

3.3.2	Payment Limited to Satisfactory Services and Delivery of Goods
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
Article 13	Data and Security

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

Article 9 Rights In Deliverables

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

9.2 Works for Hire. If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the

United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

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

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

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

10.4 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.

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, (c) a candidate for that City elective office, or (b) 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: Evan Knopf, Senior Transportation Planner
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Phone: 415-646-2135
Evan.Knopf@sfmta.com

To Contractor: Gregory S. Emas
CFO
ETC Institute
725 W Frontier Lane
Olathe, KS 66061
greg.emas@etcinstitute.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 shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 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. This Agreement is subject to the terms and conditions of the MTC Cooperative Use Agreement and is intended to supplement, but not change or otherwise modify the terms and conditions set forth in Appendix A. 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 MTC, Contractor's proposal, and Contractor's printed terms, respectively.

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

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

12.1.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a

penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information

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

13.1.2 Confidential Information . In the performance of Services, Contractor may have access to, or collect on City's behalf, City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

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

13.3 Reserved. (Business Associate Agreement).

13.4 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.

13.5 Management of City Data and Confidential Information

13.5.1 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.

13.5.2 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.

Article 14 MacBride And Signature

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

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>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: _____ David F. Innis Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>ETC Institute</p> <hr/> <p>Gregory S. Emas CFO 725 W Frontier Lane Olathe, KS 66061</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: 0000020455</p>
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Appendices

- A: MTC Consultant Bench Cooperative Purchasing Agreement documents
- A1: MTC Administrative Committee Approval of Consultant Bench: 2023 Transit Passenger Surveying Services Bench
- A2: MTC RFQ for 2023 Transit Passenger Surveying Services Bench
- A3: ETC Institute Proposal for 2023 Transit Passenger Surveying Services Bench
- B: Scope of Services
- C: Calculation of Charges

Appendix A1
**MTC Administrative Committee Approval of Consultant Bench: 2023 Transit Passenger
Surveying Services Bench**

Appendix A2
MTC RFQ for 2023 Transit Passenger Surveying Services Bench

Appendix A3
ETC Institute Proposal for 2023 Transit Passenger Surveying Services Bench

Appendix B Scope of Services

1. Description of Services

The San Francisco Municipal Transportation Agency (SFMTA) seeks to collect passenger data for its Municipal Railway (Muni) transit system in the City and County of San Francisco (City). Demographic and travel information data collected from this effort will be used to help ensure compliance with Title VI requirements, including to perform fare and service equity analyses and service monitoring, as well as route studies and general customer information studies. This data is required to satisfy Title VI regulatory requirements. It will also advance SFMTA's broader Strategic Plan goals to identify and reduce disparate outcomes, resolve past harm towards marginalized communities, and deliver reliable and equitable transportation services.

Specific tasks shall include:

Task 1. Prepare Project Management Plan (PMP)

The project management plan will also be co-developed with the consultant and the SFMTA and should reflect survey methodology. The PMP will include sampling plan approach, surveyor protocols, survey methodology, QAQC plan, weighting/expansion plan, and outreach materials/plan. The PMP will include a staffing plan, detailing the personnel who will administer the survey and the survey administration schedule. There will be extensive intercept surveying at both stops and onboard transit vehicles. The survey administration plan must describe the survey administration methods that will be used, which should reflect the best practices of survey administration, including ethical survey approaches for engaging with participants (e.g., protecting confidential respondent information; not assuming gender or race/ethnicity identities).

Task 1 Payment Milestone/Deliverable: *Final PMP, Amount \$36,699.32*

Task 2. Develop Transit Passenger Survey Instrument

This task includes collaborating on the development of a survey instrument to be utilized in passenger data collection. The SFMTA has drafted a transit passenger survey and seeks input from a consultant experienced in surveying and statistics to ensure the survey instrument is clear, concise, relevant in scope, and best informs the SFMTA's data analyses. The survey instrument will be converted to an in-person tablet programming that will be administered by trained interviewing personnel. It will include logic checks, transfer feasibility and other features to ensure accurate data is collected.

Task 2 Payment Milestone/Deliverable: *Survey Instrument and Tablet Intercept Program, Amount \$52,355.98*

Task 3. Prepare Sampling Plan

Sampling plan:

To implement an effective Muni passenger survey, sampling plans need to have sufficient complexity to reflect ridership patterns. This includes having a statistically significant sample

size (at least 5-7% of all rides), examining ridership at different times periods (e.g., morning peak, mid-day school, evening peak, late night, owl) for both weekday and weekend ridership. Sampling must also include sufficient resources for the limited-English proficient populations in San Francisco, e.g., Spanish, Chinese (Cantonese), and Filipino. SFMTA's data needs may require that surveys are segmented by transit line, direction, and time of day, and/or other means of sampling stratification. MTA will share all available data pertinent to sampling, including ridership numbers by route, mode and time of day (MTA currently tracks this daily for all vehicles with the exception of cable car and street car lines). The consultant should be prepared to collect any necessary additional needed data (e.g., boarding counts and/or passenger boarding/alighting pattern data) prior to developing sampling plans; it may be necessary to construct sampling plans that better represent how ridership, vehicle loads, and passenger demographics can vary between routes and between segments along a single route. Using ridership data provided by SFMTA, ETC will develop a sampling plan that allocates the 23,850 (approx. 5% of average weekday ridership) weekday OD surveys across all routes/lines by direction and time of day (6 time groupings including "owl" service). ETC will also prepare a separate "weekend" sampling plan that allocates 2,600 weekend OD surveys by major service type for Sat and Sun.

Task 3 Payment Milestone/Deliverable: *Approval by SFMTA of complete Weekday (23,850 OD surveys) and Weekend (2,600 OD surveys) sampling plans. Amount \$39,739.64*

Task 4. Pilot Test

The consultant will pilot test the survey and proposed methods before full implementation. Based on the effectiveness of the pilot, the consultant will finalize the survey instrument, programming and methods, with approval by the SFMTA.

Task 4 Payment Milestone/Deliverable: *Results of survey pilot testing. Amount \$40,226.57*

Task 5. Administer Transit Passenger Survey

The consultant will implement the transit passenger survey based on the methodology and administration plans described in Task 1, 2 and Task 3. While administering the survey, the consultant will provide regular status updates to SFMTA through, at least, bi-weekly check-ins, and through dynamic dashboards, to communicate overall progress on the project and ensure data on target sampling populations is statistically significant and representative. The status updates and dashboards should include analyses to date on whether sampling among demographic subgroups and sampling based on transit line, direction, and time of day, and/or other means of sampling stratification are on pace to meet the targets established in the sampling plan. The weekday survey will be conducted Monday-Thursday on Non-Holiday School Days. The survey will be administered between 500am and 12am (including Owl service). ETC will collect 23,850 Weekday OD surveys and 2,600 Weekend OD surveys.

Task 5 Payment Milestone/Deliverable: 1.) Development of dynamic dashboard(s) with survey results and data visualizations and 2.) weekly/bi-weekly updates with the latest survey results.

Payment 1 Amount = \$360,830.07 (collection 25% complete)
Payment 2 Amount = \$360,830.07 (collection 50% complete)
Payment 3 Amount = \$360,830.07 (collection 75% complete)
Payment 4 Amount = \$360,830.07 (collection 100% complete)
Total = \$1,443,320.29

Task 6a. Data Processing

Cleaning and coding transit passenger survey data

Ensure that transit data are logically and consistently coded to the appropriate response categories. Data cleaning includes the application of quality assurance/quality control procedures, data reasonableness checks, protection of personally identifiable information (“PII”), and review of feedback from City staff during regular check-ins. Importantly, consultant will have access to PII in connection with this task. All PII made available to or independently obtained by consultants in connection with this task shall be protected by consultants from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to SFMTA. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this task.

Geocoding of transit passenger spatial data

Spatial data associated with survey respondent trips should be geocoded into a latitude/longitude format, and may include the following locations: trip origin, transit vehicle boarding location, transit vehicle alighting location, transit vehicle transfer location(s), final destination, home, work, school, and potentially other locations. Locations will be geocoded in real time, as the data is collected, in order to anticipate and correct any locational inaccuracies or ambiguities.

Task 6a Payment Milestone/Deliverable: *Receipt of final, raw CSV data files to City staff (SFMTA and Controller’s Office). Amount \$151,050.56*

Task 6b. Weighting and Expansion

Weighting and expansion plan:

Survey data should be weighted and expanded survey beyond route, direction, time of day, and B2A (using B2A data collected by ETC on high volume routes). Factors to consider are transit schedules and ridership, Bay Area geographic and demographic diversity, passenger boarding and alighting patterns, and SFMTA needs for data analysis (e.g., equity analyses and refinement of travel modeling tools).

Task 6b Payment Milestone/Deliverable: *1) Approval of ETC’s data expansion and weighting plan, 2) Final weekday OD WEIGHTED database. Amount \$41,920.90*

Task 7. Prepare Final Survey Report

Consultant to prepare summary report for City staff based on collected data. The report will document how the survey was conducted, including the methodology and administration plans. The report should also document quality assurance/quality control procedures, identify any problems that were encountered, and explain how problems were addressed. The report should include cross-tabulations of key variables, a discussion of the key results, and relevant high-level data summaries. The report should also provide an executive summary suitable for distribution for multiple stakeholders including policymakers, citizens, and other interested parties. Before

building out report, the Consultant will provide an outline (including list of tables/graphics) of the report for approval.

Analyses of transit passenger survey data shall include examination of demographic and travel variables. Examples of such analyses include: trip characteristics for different household composition, demographic, and income populations; English language proficiency, origin-destination travel shed analysis for San Francisco Bay Area transit passengers; and analysis of access and egress modes used to connect to transit vehicles from passenger origins and destinations.

Task 7.A Payment Milestone/Deliverable: *Approval by SFMTA of report outline*

Amount \$11,959.17

Task 7.B Payment Milestone/Deliverable: *Approval by SFMTA of final survey report.*

Amount \$11,959.17

2. 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.

3. 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.

4. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be Evan Knopf, Transportation Planner, Evan.Knopf@sfmta.com.

**Appendix C
Calculation of Charges**

Fees included in this Appendix C include all charges to provide the Services and Deliverables detailed in Appendix B.

Deliverable	Target Completion Dates	Cost
Task 1. Prepare Project Management Plan (PMP)		
<u>Deliverable 1</u> : Final PMP.	January 2024	\$36,699.32
Task 2. Develop Transit Passenger Survey Instrument		
<u>Deliverable 2</u> : Survey Instrument and Tablet Intercept Program.	January 2024	\$52,355.98
Task 3. Prepare Sampling Plan		
<u>Deliverable 3</u> : Approval by SFMTA of complete Weekday (23,850 OD surveys) and Weekend (2,600 OD surveys) sampling plans.	January 2024	\$39,739.64
Task 4. Pilot Test		
<u>Deliverable 4</u> : Results of survey pilot testing.	January 2024	\$40,226.57
Task 5. Administer Transit Passenger Survey		
<u>Deliverable 5</u> : 1.) Development of dynamic dashboard(s) with survey results and data visualizations and 2.) Weekly/bi-weekly updates with the latest survey results.	April 2024	\$1,443,320.29 Payment 1 Amount = \$360,830.07 (collection 25% complete) Payment 2 Amount = \$360,830.07 (collection 50% complete) Payment 3 Amount =

Deliverable	Target Completion Dates	Cost
		\$360,830.07 (collection 75% complete) Payment 4 Amount = \$360,830.07 (collection 100% complete)
Task 6a. Data Processing		
<u>Deliverable 6a:</u> Receipt of final, raw CSV data files to City staff (SFMTA and Controller's Office).	April 2024	\$151,050.56
Task 6b. Weighting and Expansion		
<u>Deliverable 6b:</u> 1) Approval of ETC's data expansion and weighting plan, 2) Final weekday OD WEIGHTED database.	June 2024	\$41,920.90
Task 7. Prepare Final Survey Report		
<u>Deliverable 7a:</u> Approval by SFMTA of report outline.	June 2024	\$11,959.17
<u>Deliverable 7b:</u> Approval by SFMTA of final survey report.	July 2024	\$11,959.17
Total Cost		\$1,829,231.59
	Rounded to	\$1,829,232.00