

THIS PRINT COVERS CALENDAR ITEM NO.: 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transit Services

BRIEF DESCRIPTION:

Awarding San Francisco Municipal Transportation (SFMTA) Contract No. SFMTA-2017-07, Repair of Collision-Damaged Historic Streetcar No. 162 (Car No. 162), to Carlos Guzman Inc., to repair the structural and collision damage on Historic Streetcar No. 162, in an amount not to exceed \$704,019, and for a term of 18 months.

SUMMARY:

- On January 4, 2014, SFMTA's Car No. 162 sustained significant structural and cosmetic damage in a collision with a big-rig truck while in service.
- On December 5, 2016, the SFMTA issued a Request for Proposals (RFP) to repair the damage to Car No. 162.
- A selection panel evaluated two proposals and ranked Carlos Guzman Inc.'s proposal highest.
- Carlos Guzman Inc. will restore the structural integrity, repair or replace and reinstall damaged components and repaint the entire streetcar.
- Car No. 162 is a double-ended vehicle that will operate on the E-line when returned to service and provide a critical need for additional equipment on that line.

ENCLOSURES:

1. SFMTA Board Resolution
2. Contract

APPROVALS:

DATE

DIRECTOR 

8/28/2017

SECRETARY 

8/28/2017

ASSIGNED SFMTAB CALENDAR DATE: September 5, 2017

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PURPOSE

Awarding San Francisco Municipal Transportation Contract No. SFMTA-2017-07, Repair of Collision-Damaged Historic Streetcar No. 162, with Carlos Guzman Inc., to repair the structural and collision damage on Historic Streetcar No. 162, in an amount not to exceed \$704,019, and for a term of 18 months.

STRATEGIC PLAN GOALS AND TRANSIT FIRST PRINCIPLES

This contract will facilitate the implementation of the following goals, objectives initiatives in the SFMTA Strategic Plan:

Goal 2: Make transit, walking, bicycling, taxi, ridesharing and carsharing the preferred means of travel.

Objective 2.1: Improve customer service and communications.

Objective 2.3: Increase use of all non-private auto modes.

Objective 3.2: Increase the transportation system's positive impact to the economy.

This action supports the following Transit First Policy Principles:

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

DESCRIPTION

The SFMTA's fleet of active historic streetcars includes 32 Presidents' Conference Committee (PCC) and 10 Peter Witt (Milan) cars. Only seven of these historic streetcars are double-ended.

As part of its regular daily service, the SFMTA operates up to five historic streetcars, eight hours per day, 365 days per year on Muni's E-line, which operates from Fisherman's Wharf to the 4th/King Caltrain Station via The Embarcadero. The E-line can only be operated with double-ended vehicles, because the southern terminal is a tail track rather than a loop. There is currently an immediate need to increase the E-line capable fleet of double-ended streetcars to meet current and future service demands.

On January 4, 2014, Historic Streetcar No. 162 (Car 162), a double-ended streetcar, sustained significant structural and cosmetic damage in a collision with a big-rig truck while in service.

On December 5, 2016, the SFMTA issued a Request for Proposals to repair the damage to Car 162 in order to return the vehicle to revenue service, and on January 13, 2017, the City received proposals from Alstom Transportation Services and Carlos Guzman Inc.

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A selection panel comprised of parties with expertise in historic streetcars, structural and transportation engineering was identified and convened to evaluate both proposals and ranked Carlos Guzman Inc.'s proposal highest. The selection panel included panelists from SFMTA's Transit Division and the Market Street Railway.

On June 14, 2017, the SFMTA Contract Compliance Office reviewed the proposals and determined that the proposal from Carlos Guzman Inc. was responsive and that the firm is committed to meeting the Non-discrimination Equal Employment requirements of the contract. Carlos Guzman Inc. is in compliance Chapter 12B (Equal Benefits provision) of the San Francisco Administrative Code.

Under this proposed contract, Car 162 will be repaired and repainted, providing the SFMTA an additional double-ended streetcar for daily revenue service on the E-line. The Contractor shall restore the structural integrity, repair or replace and reinstall damaged components, and repaint the entire streetcar.

The contract schedule calls for Carlos Guzman Inc. to complete repairs and deliver the vehicle to SFMTA within 90 days of contract award. The contract amount is not to exceed \$704,019.

STAKEHOLDER ENGAGEMENT

The Market Street Railway has been involved in the project and concurs with the need to repair Historic Streetcar No. 162.

ALTERNATIVES CONSIDERED

The alternative considered was to complete the repairs using SFMTA personnel, but the immediate need for the double-ended vehicle for service requires an aggressive 90-day completion schedule that could not be met by SFMTA Fleet Maintenance at current staffing levels.

FUNDING IMPACT

Operating funds required for this project are budgeted in the Transit Division's current year budget.

ENVIRONMENTAL REVIEW

On August 7, 2017, the San Francisco Planning Department determined that the Repairs to Damaged Streetcar 162 is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

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OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's office has reviewed this report.

The Civil Service Commission approved contracting out for this project on December 5, 2016.

RECOMMENDATION

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors award Contract No. SFMTA-2017-07, Repair of Collision-Damaged Streetcar No. 162, with Carlos Guzman Inc. to repair the structural and collision damage of Historic Streetcar No. 162, in an amount not to exceed \$704,019, and for a term of 18 months.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, As part of its regular daily service, the San Francisco Municipal Transportation Agency (SFMTA) operates up to five historic streetcars, eight hours per day, 365 days per year, on Muni's E-line along The Embarcadero; and,

WHEREAS, As a result of the southern terminal of the E-line being a tail track rather than a loop, double-ended streetcars are the only viable vehicles on this route; and,

WHEREAS, There is an immediate need to increase the fleet of double-ended streetcars capable of operating on the E-line to meet current and future service demands; and,

WHEREAS, Historic Streetcar No. 162, a double-ended streetcar, was seriously damaged and must be repaired to provide additional equipment for current and future passenger service along the E-line, and;

WHEREAS, The SFMTA issued a Request for Proposals on December 5, 2016, to repair the damage to Historic Streetcar No. 162, and on January 13, 2017, the City received proposals from Alstom Transportation Services and Carlos Guzman Inc.; and,

WHEREAS, A selection panel evaluated both proposals and ranked Carlos Guzman Inc.'s proposal higher; and,

WHEREAS, The Civil Service Commission authorized the SFMTA to contract out the repair of collision-damaged Historic Streetcar No. 162 at its December 5, 2016, meeting, through Notice of Action for Personal Service Contract Number 48462-16/17; and,

WHEREAS, Operating funds required for this project are included in the Transit Division's current year budget, and,

WHEREAS, On August 7, 2017, the San Francisco Planning Department determined that the "Repairs to Damaged Streetcar 162" is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, 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 San Francisco Municipal Transportation Agency Board of Directors awards Contract No. SFMTA-2017-07-17, Repair of the Collision-Damage Historic Streetcar No. 162, with Carlos Guzman Inc., in an amount not to exceed \$704,019, and for a term of 18 months.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 5, 2017.

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

Carlos Guzman Inc.

For Repair of Damaged Streetcar No. 162

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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
Carlos Guzman Inc.
Contract No. SFMTA-2017-07**

This Agreement is made this 16th day of August 2017, in the City and County of San Francisco, State of California, by and between Carlos Guzman Inc., 1619 East Creston Street, Signal Hill, CA 90755 (Contractor) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

- A.** The SFMTA wishes to obtain the services of a qualified firm to repair damaged historic Streetcar #162.
- B.** This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on December 5, 2016, pursuant to which City selected Contractor as the highest-qualified scorer.
- C.** There is no Local Business Entity (LBE) subcontracting participation requirement for this Agreement.
- D.** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- E.** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 48462-16/17 on December 5, 2016.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Acceptance” means the formal written acceptance by an authorized representative of the City and County of San Francisco that all work, or a specific portion thereof, under the Contract has been satisfactorily completed.

1.2 “Agreement” or “Contract” means this contract document, executed by the City and Contractor, covering the performance of the work and furnishing of labor, materials, equipment, tools, and services, including work incidental to the procurement, to include all attached appendices, and all applicable City Ordinances and Mandatory City Requirements that

are specifically incorporated into this Agreement by reference as provided herein, the Technical Specifications, the Contract bonds or other security, and all modifications to the Contract.

1.3 “Award” means authorization by resolution of the SFMTA Board of Directors for its staff to execute the Contract with the Contractor, subject to receipt of a bond to secure the performance thereof, and to such other conditions as may be specified or otherwise required by law.

1.4 “CCO” means the SFMTA Contract Compliance Office.

1.5 “Certification” means a determination by the City Controller that funds necessary to make payments as required under the contract are available in accordance with the City's Charter.

1.6 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

1.7 “CMD” means the Contract Monitoring Division of the City.

1.8 “Conditional Acceptance; Conditionally Accepted” means to the condition of the repaired Streetcar that, in the SFMTA's determination, does not meet the requirements for full acceptance, but is authorized by the SFMTA to enter into revenue service, pending completion of all repairs.

1.9 “Conformed Contract Documents” means the contract documents that have been revised to incorporate information included in the Contractor's Proposal and accepted by the City.

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

1.11 “Contract Modification” means a written order, issued by the City to Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

1.12 “Contractor” means Carlos Guzman Inc., 1619 East Creston Street, Signal Hill, CA 90755.

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

1.14 “Days” means working days of the City unless designated otherwise.

1.15 “Defect” means any condition or characteristic in any Material and/or Equipment or Services furnished by the Contractor under this Contract that is not in compliance with the requirements of the Contract.

1.16 “Deliverables” means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the

Agreement, including without limitation, the work product described in the “Technical Specifications” attached as Exhibit A.

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

1.18 “Engineer” means the SFMTA Engineer assigned to the Contract or his or her designated agent.

1.19 “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.

1.20 “Material and/or Equipment” means the end items, including data, furnished by the Contractor, and related Services required under the Contract.

1.21 “Muni” means the San Francisco Municipal Railway, the public transit system of the City under the supervision and control of the San Francisco Municipal Transportation Agency.

1.22 “Notice to Proceed” means a written notice to the Contractor of the date on which it shall begin prosecution of the Services to be performed under the Contract.

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

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

1.25 “Proposal” means the Contractor’s formal response to the RFP.

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

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

1.28 “Services” means the work performed by Contractor under this Agreement as specifically described in the “Technical Specifications” attached as Exhibit A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.29 “Streetcar” or “Vehicle” means the streetcar or vehicle subject to repair under this Contract.

1.30 “Subcontractor” means any individual, partnership, firm, or corporation, which undertakes integrally on the Project the partial or total design, manufacture, or performance of

one or more items of work under the terms of the Contract. As used herein, the terms Subcontractor and Supplier are synonymous.

1.31 “Technical Specifications” means the specifications, provisions, and requirements that detail the work and the materials, products (including the methods of manufacture, construction, assembly, and testing), and other requirements of the Services under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the later of: (i) August 16, 2017; or (ii) the Effective Date and expire 18 months thereafter, unless earlier terminated as otherwise provided herein.

2.2 The City may only extend this Agreement beyond the expiration date by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

Article 3 Financial Matters

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

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

3.2 Guaranteed Maximum Costs. The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, “Modification of this Agreement.”

3.3 Compensation.

3.3.1 Payment. In no event shall the amount of this Agreement exceed Seven Hundred Four Thousand and Nineteen Dollars. The breakdown of charges associated with this Agreement appears in Exhibit B, "Price Schedule," incorporated by reference as though fully set forth.

3.3.2 Progress Payments. . Progress payments shall be made as set forth in Exhibit C, "Payment Schedule," attached hereto and incorporated by reference as though fully set forth herein. Progress payments shall be made by the City to Contractor at the address specified in the section entitled "Notices to the Parties."

3.3.3 Invoices. Contractor shall provide an invoice to the SFMTA for the milestones completed as set out in Exhibit C. Compensation shall be made for Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes have been satisfactorily performed. In no event shall City be liable for interest or late charges for any late payments. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 11.1, "Notices to the Parties," or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.4 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

3.3.6 LBE Payment. Contractor must submit all required CMD payment forms to CCO should Contractor employ LBE subcontractors under this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment forms. Failure to submit all required CMD payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required CMD payment forms are provided. Following SFMTA's payment of an invoice, Contractor has

10 calendar days to submit a CMD Form 9 Payment Affidavit verifying its payments to LBE subcontractors.

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

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

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

3.3.8 Title. Upon the earlier of payment or acceptance of any part, component, or assembly, Contractor warrants that title to said part, component or assembly shall pass to the City free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims and demands of any character.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false

claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Exhibit A, “Technical Specifications.” 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 Exhibit A, unless Exhibit A is modified as provided in Section 11.5, “Modification of this Agreement.”

4.2 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor’s authorized subcontractors) to perform the Services. Contractor 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 City’s execution of this Agreement constitutes its approval of the subcontractors listed below.

1. American Sheet Metal. Contact: Eli Choueiry, 714-780-0155.
2. Orange Empire Railway Museum. Contact: Rod Fishburn, 951-943-3020.
3. Fine Woodworking (Waite Wood). Contact: Todd Waite, 310-293-6166.

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

4.4.1 Independent Contractor. For the purposes of this Article 4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this

Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 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 the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its

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

4.5 Assignment. The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 Warranty and Repairs.

4.6.1 General. 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.

4.6.2 Warranty Provisions

(a) **Contractor Warranty.** Warranties in this document are in addition to any statutory remedies or warranties imposed on the Contractor. Warranties include 100 percent of parts and labor costs. Consistent with these requirements, the Contractor warrants and guarantees to the SFMTA the complete Streetcar, including paint and bodywork, and specific subsystems and components repaired under this Agreement, to be free from Defects for two years, beginning on the date of Acceptance of the Streetcar under the applicable provisions of the Technical Specifications. The warranty is based on regular operation of the Streetcar under the operating conditions prevailing in Muni service.

(b) **Detection of Defects.** If the SFMTA detects a Defect within the warranty period, it shall within 20 working days, notify the Contractor's representative. Within 10 working days after receipt of notification, the Contractor's representative shall either agree that the Defect is in fact covered by warranty, or reserve judgment until the subsystem or component is inspected by the Contractor's representative or is removed and examined at the SFMTA's property or at the Contractor's plant. At that time, the status of warranty coverage on the subsystem or component shall be mutually resolved between the SFMTA and the Contractor.

(c) **Scope of Warranty Repairs.** When warranty repairs are required, the SFMTA and the Contractor's representative shall agree within 20 working days after notification on the most appropriate course for the repairs and the exact scope of the repairs to be performed under the warranty. If no agreement is obtained within the 20-day period, the SFMTA reserves the right to commence the repairs in accordance with "Repairs by SFMTA" (Section 4.6.3(c)).

4.6.3 Repair Procedures

(a) **Repair Performance.** The Contractor is responsible for all warranty-covered repair work. To the extent practicable, the SFMTA will allow the Contractor or its designated representative to perform such work. At its discretion, the SFMTA may perform such work if it determines it needs to do so based on transit service or other requirements. Such work shall be reimbursed by the Contractor.

(b) **Repairs By Contractor**

i. Unless the time is extended by the SFMTA, the Contractor or its designated representative shall begin work on warranty-covered repairs within 20 working days after receiving notification of a Defect from the SFMTA. The SFMTA shall make the Streetcar available to complete repairs timely with the Contractor repair schedule.

ii. The Contractor shall provide at its own expense all spare parts, tools, and space required to complete repairs. At the SFMTA's option, the Contractor may be required to remove the Streetcar from the SFMTA's property while repairs are being performed. If the Streetcar is removed from the SFMTA's property, repair procedures must be diligently pursued by the Contractor's representative. Contractor shall bear all costs for transporting the Streetcar for repairs.

(c) **Repairs By SFMTA**

i. **Parts Used.** If the SFMTA performs the warranty-covered repairs, it shall correct or repair the Defect and any Related Defects utilizing parts supplied by the Contractor specifically for this repair. At its discretion, the SFMTA may use Contractor-specified parts available from its own stock if deemed in its best interest. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this warranty shall be submitted by the SFMTA to the Contractor for reimbursement or replacement of parts. The Contractor shall provide forms for these reports.

ii. **Contractor Supplied Parts.** The SFMTA may require that the Contractor supply new parts for warranty-covered repairs being performed by the SFMTA. These parts shall be shipped prepaid to the SFMTA from any source selected by the Contractor within 10 Days of receipt of the request for said parts. Parts supplied by the Contractor shall be equivalent or superior to that used in the Streetcar's original manufacture.

iii. **Return of Defective Components.** The Contractor may request that parts covered by the warranty be returned to the manufacturing plant. The total cost for this action shall be paid by the Contractor. Materials should be returned in accordance with Contractor's instructions.

iv. **Reimbursement for Labor.** Contractor shall reimburse the SFMTA for labor. The amount shall be determined by multiplying the number of man-hours actually required to correct the Defect by the current top mechanic's hourly overtime wage rate. The wage rate, and therefore, the warranty labor rate, is subject to adjustment each year. For one calendar year from the date of delivery of the vehicle and acceptance by the SFMTA, the warranty labor rate shall be based on the mechanic's wage rate of \$147.05/hour,

which includes labor, fringe benefits, and overhead. Contractor shall also reimburse the SFMTA for the cost of transporting the Streetcar if such action was necessary. These wage and fringe benefit rates shall not exceed the rates in effect in the SFMTA's service division at the time the Defect correction is made.

v. Reimbursement for Parts. Contractor shall reimburse the SFMTA for defective parts and for parts that must be replaced to correct the Defect. The reimbursement shall be at the current price at the time of repair and shall include taxes where applicable and 15 percent handling costs.

vi. Reimbursement Requirements. The Contractor shall reimburse the SFMTA for warranty labor and/or parts within 60 days of receipt of the warranty claim.

(d) Warranty After Replacement/Repairs. If any component, unit, or subsystem is repaired, rebuilt or replaced by the Contractor, or by the SFMTA with the concurrence of the Contractor, the component, unit, or subsystem shall be assigned a new warranty period equal to the original manufacturer's warranty, effective the replacement date.

4.7 Unavoidable Delays.

4.7.1 Definition. An Unavoidable Delay is an interruption of the work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include and are limited to acts of God; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the work ordered by the City insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City of the Contractor's commencing or prosecuting the work. The duration of said Unavoidable Delays shall be limited to the extent that the commencement, prosecution, and completion of the work are delayed thereby, as determined by the City.

4.7.2 Notification of Delay. The Contractor shall notify SFMTA as soon as the Contractor has, or should have, knowledge that an event has occurred that will delay deliveries. Within five calendar days, the Contractor shall confirm such notice in writing, furnishing as much detail as is available.

4.7.3 Request for Extension. The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by SFMTA to make a decision on any request for extension due to Unavoidable Delays. SFMTA shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension and the duration of such extension. SFMTA shall notify the Contractor of its decision in writing. The granting of an extension of time because of Unavoidable Delays shall in no way

operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or of any other rights to which the City is entitled.

4.8 Liquidated Damages. Time is of the essence in this Agreement. By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4.1 herein, are delayed beyond the scheduled milestones and timelines as provided in Exhibit D, "Project Delivery Schedule," attached hereto and incorporated by reference herein. City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the amount listed below for each day of delay beyond scheduled milestones and timelines are not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, 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 deliver to City within the time fixed or such extensions of time permitted in writing by the SFMTA.

- Failure to deliver the Streetcar by the times stated in the Contract: \$500 per day.

Notwithstanding the above, liquidated damages under this Agreement shall not exceed 30% of the total amount of the Contract (i.e., the amount stated in Section 3.3.1, plus the value of any amendments to the Contract).

4.9 Bonding Requirements.

4.9.1 Within 20 days following the receipt of a notice of recommended award of contract and until completion of all Contract obligations and acceptance by City of the final repaired Streetcar, the Contractor shall furnish to City a performance bond and payment bond, each in an amount not less than \$150,000, to guarantee Contractor's faithful performance of all obligations of the Contract and to guarantee Contractor's payment to all suppliers of labor and materials under this Contract, excluding the period covered by the warranty bond described in Subsection 4.9.2 below.

4.9.2 From acceptance by City of the repaired Streetcar, and throughout the warranty period Contractor shall supply a maintenance or warranty bond in the amount of \$50,000 to guarantee Contractor's warranty obligations under this Agreement.

4.9.3 Corporate sureties issuing the all required bonds under this Agreement must be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than "A-, VIII," shall be listed in the current version of the United States Department of the Treasury's listing of Approved Sureties (Treasury Dept. Circular 570), and shall be satisfactory to the City.

4.9.4 During the period covered by the Agreement, if any of the sureties upon the bond shall become insolvent or, in the opinion of SFMTA, unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within 30

Days after notice given by SFMTA to Contractor, shall by supplemental bond or otherwise, substitute another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30-day period to substitute another and sufficient surety, Contractor, if SFMTA so elects, shall be deemed to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due Contractor under the Agreement. The amount for which the surety shall have justified on the bond and the moneys so deducted shall be held by City as collateral for the performance of the conditions of the bond.

4.10 Letter of Credit

4.10.1 Requirements. As an alternative to the bond requirements provided in Section 4.9, within five Days after receiving notification of approval of the Agreement, Contractor shall provide to City and maintain, throughout the term of this Agreement or until all of its obligations under the Agreement have been completely performed, whichever is later, a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, in the amount of \$150,000. The letter of credit must have an original term of one year, with automatic renewals of the full \$150,000 amount throughout the term of the Agreement. If Contractor fails to deliver the letter of credit as required, City will be entitled to cancel this Agreement. The letter of credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Director of Transportation on behalf of the City and County of San Francisco.

4.10.2 Financial Institution. The letter of credit must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution must (a) be a bank or trust company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least \$25,000,000, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating.

4.10.3 Demand on Letter of Credit. The letter of credit will constitute a security deposit guaranteeing faithful performance by Contractor of all terms, covenants, and conditions of this Agreement, including all monetary obligations set forth herein. If Contractor defaults with respect to any provision of this Agreement, SFMTA may make a demand under the letter of credit for all or any portion thereof to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty. Such loss or damage may include without limitation any damage to or restoration of City property or property that is required to be constructed, maintained or repaired pursuant to this Agreement, payments to City, and claims for liquidated damages; provided, however, that City will present its written demand to said bank for payment under said letter of credit only after City first has made its demand for payment directly to Contractor, and five full Days have elapsed without Contractor

having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the letter of credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the letter of credit is so used or applied by City, Contractor, within 10 business days after written demand by City, shall reinstate the letter of credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

4.10.4 Expiration or Termination. The letter of credit must provide for 60 Days notice to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business Days prior to its expiration. In the event the City receives notice from the issuer of the letter of credit that the letter of credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement letter of credit (in a form and issued by a financial institution acceptable to the City) within 10 Days following the City's receipt of such notice, such occurrence shall be an Event of Default under Section 8.2, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the letter of credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement under the terms of this Section 4.10.4. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the letter of credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

4.10.5 Return of Letter of Credit. The letter of credit will be returned no later than 30 Days of Acceptance, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 4.5, City will return or release the letter of credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent letter of credit, as determined by City.

4.10.6 Excessive Demand. If City receives any payments from the aforementioned bank under the letter of credit by reason of having made a wrongful or excessive

demand for payment, City will return to Contractor the amount by which City's total receipts from Contractor and from the bank under the letter of credit exceeds the amount to which City is rightfully entitled, together with interest thereon at the legal rate of interest, but City will not otherwise be liable to Contractor for any damages or penalties.

Article 5 Insurance and Indemnity

5.1 Insurance.

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

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (c) 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.
- (d) Garagekeepers' legal liability insurance, comprehensive form, with limits not less than \$1,000,000 each occurrence, including coverage for vehicles parked on the site as well as vehicles on the site for repair.

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

- (a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- (b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

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

5.1.4 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this

Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

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

5.1.7 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.

5.1.8 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, except where the damage results from equipment containing a Defect, and the Defect is the sole cause of the damage.

6.3 Liability for Incidental and Consequential Damages. Except for liquidated damages, Contractor shall not be responsible for indirect, incidental and consequential damages resulting from Contractor's acts or omissions, including but not limited to, lost profits or revenue and business interruption. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

6.4 Assumption of Risk of Loss. Prior to acceptance of the repaired Streetcar, the Contractor shall bear risk of loss of the Streetcar, including any damage sustained during transportation to the delivery site or during acceptance testing. The City shall assume risk of loss of the Streetcar only after acceptance.

Article 7 Payment of Taxes

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

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

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

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

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

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

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

(c) At the SFMTA's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to the SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

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

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

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

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services the SFMTA has not already tendered payment. Reasonable costs may 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 the City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by the SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

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

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

8.2 Termination for Default; Remedies.

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

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

- | | |
|-----------|---|
| 3.5 | Submitting False Claims. |
| 4.5 | Assignment |
| Article 5 | Insurance and Indemnity |
| Article 7 | Payment of Taxes |
| 10.10 | Alcohol and Drug-Free Workplace |
| 11.10 | Compliance with Laws |
| 13.1 | Nondisclosure of Private, Proprietary or Confidential Information |

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

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

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

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

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

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

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

8.4 Rights and Duties upon Termination or Expiration.

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

- 3.3.4 Payment Limited to Satisfactory Services
- 3.4 Audit and Inspection of Records
- 3.5 Submitting False Claims
- Article 5 Insurance and Indemnity
- 6.1 Liability of City
- 6.3 Liability for Incidental and Consequential Damages
- Article 7 Payment of Taxes
- 8.1.6 Payment Obligation
- 9.1 Ownership of Results
- 9.2 Works for Hire
- 11.6 Dispute Resolution Procedure
- 11.7 Agreement Made in California; Venue
- 11.8 Construction
- 11.9 Entire Agreement
- 11.10 Compliance with Laws
- 11.11 Severability
- 13.1 Nondisclosure of Private, Proprietary or Confidential Information

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

Article 9 Rights In Deliverables

9.1 Ownership of Results. Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by

Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

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

Article 10 Additional Requirements Incorporated by Reference

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

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

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

10.4 Reserved.

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

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

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 that it is familiar with Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 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>. A partial listing of some of Contractor’s obligations under Chapter 12T is set forth in this Section. 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. (Sugar-Sweetened Beverage Prohibition).

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.

10.18.1 Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

10.19 Preservative Treated Wood Products. Contractor shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each Contractor purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

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, e-mail, overnight mail, or courier, and shall be addressed as follows:

To City: **San Francisco Municipal Transportation Agency**
601 25th Street
San Francisco, California 94107
Attn: Scott Middleton
Phone: (415) 646-2356
scott.middleton@sfmta.com

To Contractor: **Carlos Guzman Inc.**
1619 East Creston Street
Signal Hill, CA 90755
Attn: Carlos Guzman
cgincorporated@mac.com

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

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

11.3 Reserved.

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

11.5 Modification of this Agreement.

11.5.1 Modification in Writing. 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).

11.5.2 Extra Work. The City may order changes in the work under this Agreement and may order extra materials and extra work in connection with the performance of the Agreement, and the Contractor shall promptly comply with such orders, except that:

(a) If changes ordered in design, workmanship, services, or materials are of such a nature as to increase or decrease the cost, or the time required to execute the change in scope of work, the City shall make a reasonable and proper adjustment in the contract price, delivery schedule, or both as agreed upon by the Contractor and the City as the reasonable and proper allowance for the increase or decrease required.

(b) No order for any alteration, modification, or extra that will increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price

shall have been agreed upon in writing and approved by the Project Manager. No oral statement of any person whatsoever shall in any manner or degree modify or otherwise affect the terms of this contract, which include the requirements of the Technical Specifications.

11.5.3 Changes in Law. Any increase in Contractor's costs attributable to the need to comply with a change in law will be reimbursed by the City through a Contract Modification under the procedure set forth in Section 11.5.2.

11.6 Dispute Resolution Procedure.

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

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

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

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

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

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

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's Proposal dated January 13, 2017. The RFP and Contractor's Proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 SFMTA Specific Terms

12.1 Large Vehicle Driver Safety Training Requirements

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

12.1.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or

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

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

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

Article 14 MacBride Principles And Signature

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

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Edward D. Reiskin 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: _____ Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Carlos Guzman Inc.</p> <hr/> <p>Carlos Guzman President 1619 East Creston Street Signal Hill, CA 90755</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 Article 13: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 97037</p>
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Exhibits

- A: Technical Specifications
- B: Price Schedule
- C: Payment Schedule
- D: Project Delivery Schedule

EXHIBIT A
Technical Specifications

I. SERVICES TO BE PERFORMED

A. GENERAL

The Streetcar shall be rehabilitated in accordance with these Technical Specifications.

Notwithstanding the Technical Specifications or other data provided by the Engineer, the Contractor shall have the responsibility of supplying all parts and details required to rehabilitate the Streetcar as specified in the Technical Specifications. Items that are installed by SFMTA shall not be the responsibility of the Contractor unless they are included in this contract or should have been installed by the Contractor.

The Contractor shall be responsible for all materials and workmanship in the repair of the Streetcar systems required by the Technical Specifications and all accessories used, whether the same are manufactured by the Contractor or purchased from a Subcontractor. This provision excludes equipment leased or supplied by SFMTA, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the repair of the Streetcar.

B. DESCRIPTION OF WORK

The Contractor shall provide all of the materials (unless otherwise noted), equipment, labor and supervision necessary to repair the structural and cosmetic accident damage to the SFMTA's Historic Streetcar No. 162.

The Contractor shall restore the structural integrity, repair or replace and reinstall damaged components and repaint the entire streetcar according to this Technical Specification.

C. STRUCTURE

All structural wood components shall be made of straight grain clear Prime or better White Oak. All steel components shall be mild carbon steel.

1. The end sill shall be repaired and installed straight and level.
2. Any damage to the underframe draft or side sills shall be repaired
3. The damaged collision and door posts and structural shelves shall be replaced.
4. All of the front fascia sheet steel shall be replaced.
5. The damaged window frames shall be replaced.
6. New DOT-numbered laminated windshield glass shall be installed.
7. Broken roof carlines shall be replaced.

8. Broken roof purlines shall be replaced.
9. Broken roof battens shall be repaired or replaced. Splices shall be over carlines, and no two splices can be adjacent to each other.
10. Damaged Roof edge sills shall be replaced.
11. The damaged roof canvas shall be repaired.

D. PNEUMATIC SYSTEM

The following pneumatic system components shall be replaced or repaired to good working order and reinstalled:

1. The brake valve.
2. The sander valve.
3. The emergency dump valve and pull cord.
4. The horn & gong.
5. The foot mushroom valve actuators.
6. All damaged or bent air piping shall be replaced.
7. The air gage shall be repaired or replaced, and calibrated.

E. ELECTRICAL

1. All bent or damaged conduit shall be replaced. The existing wiring shall be re-fed through the conduit and secured.
2. An SFMTA-supplied replacement master controller shall be installed.
3. All displaced electrical boxes shall be repaired or replaced if damaged and reinstalled.
4. Displaced light fixtures shall be repaired or replaced, if necessary, and reinstalled.
5. Ceiling switch group shall be repaired and reinstalled.
6. The emergency “slug” mechanism shall be repaired so that it functions properly.
7. A new trolley pole and trolley head current collector shall be installed.

F. OTHER COMPONENTS

1. The parking brake mechanism shall be repaired so that it functions properly.
2. The life safety guard shall be repaired, if necessary, and made to function properly.
3. The moving seat mechanisms shall be repaired so that they function properly.
4. Damaged seat boards shall be replaced with new mahogany boards.

5. The moving step mechanisms shall be repaired and function properly.
6. Damaged gates shall repaired or replaced, and the mechanisms shall function properly.
7. The damaged stanchion, fence and grab handle shall be repaired or replaced.
8. The Operator's seat and pedestal shall be repaired and reinstalled.
9. Damaged or missing rope hooks shall be replaced.
10. The displaced rope catcher shall be repaired, if necessary, and reinstalled.
11. The roof-mounted destination sign and mechanism shall be repaired and reinstalled.
12. The rope guards shall be repaired or replaced and reinstalled.
13. The flip seat and catch shall be repaired and reinstalled.
14. Flag holders shall be reinstalled.
15. The track iron hook shall be reinstalled.
16. The interior rope and bell shall be repaired to that they function properly.
17. All damaged trim shall be replaced.
18. The VETAG head shall be reinstalled.
19. New end sill covers shall be fabricated and installed.
20. The Operator's hand rest bar shall be repaired and reinstalled.
21. The radio box shall be repaired and reinstalled.

G. REPAINTING

1. The entire exterior of the streetcar shall be repainted. Interior components shall be "touched up" where damages were repaired.
2. The following exterior paint materials shall be used:
 - Axalta 921 or 525-885 Epoxy Primer
 - Axalta 1380s Surface Primer
 - Axalta EB Elite or 6600 Basecoat
 - Axalta 8831S Clearcoat
3. The existing green and cream "wings" theme shall be replicated with the following PPG color codes:
 - Black DUHS 9000
 - White DUHS 91597
 - Green DUHS 49408

Cream DUHS 29340

4. Paint shall be applied per the manufacturer's instructions. The paint finish shall be glossy and free of flaws, runs, and sags or orange peel texture.
5. The Contractor shall show through a standard paint adhesive tape pull test (ASTM D3359-08) that the Contractor's paint work is correctly adhered to the Streetcar.
6. The roof canvas shall be painted with color-matched exterior grade elastomeric paint.
7. The SFMTA will supply the appropriate decals and clear laminate overlay to the Contractor. The Contractor shall install the decals and laminate to the OEM specifications.

H. QUALITY ASSURANCE/QUALITY CONTROL

1. The Contractor shall use only skilled personnel who are thoroughly trained and experienced in the necessary crafts methods for proper performance of the work required under these Specifications.
2. The Contractor shall establish, maintain and enforce a Quality Assurance/Control Program. The Quality Assurance/Quality Control (QA/QC) Program shall apply to all Contract activities, including design, procurement, manufacturing, assembly, and inspection of the Streetcar.

I. SUBMITTALS

The vendor shall provide the following documentation to the SFMTA for approval:

1. Initial Pre-Shipment Inspection Report - The Contractor shall provide an initial pre-shipment inspection report.
2. Final Inspection Report - The Contractor shall provide a final inspection report.
3. Acceptance Form - The Contractor shall provide a Streetcar Acceptance Form to be signed by the Contractor and the SFMTA upon successful repair and delivery of the Streetcar.

J. EXECUTION

1. The Contractor's facility must be of sufficient size to store and perform all work to the Streetcar in-doors.
2. Within two weeks after NTP, the Contractor shall remove the Streetcar from the SFMTA's facility.
3. The Contractor shall inspect the Streetcar prior to taking possession. Concurrently, the SFMTA will make a video recording of the inspection. The Contractor shall note any damage or missing parts on the inspection report, which

the Contractor shall provide to the SFMTA prior to taking possession of the Streetcar. Any subsequent damage or missing parts while in the Contractor's possession shall be the Contractor's responsibility to correct .

4. The Contractor is responsible for shipment of the Streetcar both from the SFMTA's facility to the Contractor's facility and for its return to the SFMTA. The Contractor is responsible for the Streetcar until it is safely placed back on the tracks at the SFMTA's facility.
5. Upon arrival at the Contractor's facility, the Streetcar must be kept indoors for the duration of the project.
6. If any hazardous materials are present in the disassembled section of the Vehicle, the Contractor shall ensure those materials are disposed of in accordance with all applicable laws.
7. The Contractor shall also provide shipping to and from the SFMTA for all spare and salvaged parts.
8. **The Contractor must request and receive approval from the SFMTA before shipping the repaired Streetcar to the SFMTA's facility.** At the SFMTA's discretion, the SFMTA may inspect the Streetcar at the Contractor's facility or when it returns to the SFMTA's facility.

II. 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.

III. 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. Contractor shall submit the reports by email to the extent feasible. If any hard copies are submitted, they shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

IV. DEPARTMENT LIAISON

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be Scott Middleton.

EXHIBIT B
PRICE SCHEDULE

Complete repair of Streetcar and Warranty

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Price Each</u>	<u>Price Total</u>
1	Repair of Streetcar No. 162	1	\$661,580	\$661,580
2	Vehicle Shipping	1	\$31,619	\$31,619
3	Taxes (8.5% of Taxable Items)	1	\$10,820	\$10,820
TOTAL CONTRACT PRICE				\$704,019

EXHIBIT C

PAYMENT SCHEDULE

Milestone	Payment
Acceptance of Pre-Shipment Inspection Report (includes costs for mobilization)	20% of price for Item 1 on Exhibit B
Shipment of Streetcar to Contractor's Facility	50% of price for Item 2 on Exhibit B
Completion of Streetcar Disassembly	10% of price for Item 1 on Exhibit B
Completion of Frame and Bodywork	20% of price for Item 1 on Exhibit B
Delivery of the Streetcar	40% of price for Item 1 on Exhibit B and 50% of price for Item 2 on Exhibit B
Final Testing & Acceptance Delivery of Final Inspection Report Delivery of Acceptance Form	10% of price for Item 1 on Exhibit B

NOTE: Payment for each Milestone on this Payment Schedule will occur upon completion and acceptance of the required work, receipt of an acceptable invoice requesting payment, and completion of all relevant contract terms.

Payment of taxes to be determined.

EXHIBIT D

PROJECT DELIVERY SCHEDULE

A. Delivery of the Streetcar

1. **Streetcar Delivery Conditions.** All deliveries to SFMTA shall be to an SFMTA-specified facility, weekday working hours, Monday through Friday, 9 a.m. – 3 p.m., except SFMTA holidays, or as otherwise specified in writing by SFMTA. Contractor shall provide at least 48-hours' notice to SFMTA prior to delivery.

B. Schedule

DELIVERY MILESTONE	AFTER NTP
Dissassembly and delivery of 1st set of deliverables	30 days
Completion of body work	60 days
Delivery of repaired Streetcar No. 162	90 days