

THIS PRINT COVERS CALENDAR ITEM NO.: 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transit Services

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Contract No. SFMTA-2019-57 with ChargePoint, Inc., to procure equipment for a bus charging solution, including charging dispensers, power converters, system warranty, an integrated cloud-based subscription service, spare parts, testing and commissioning of the charging solution, and service and maintenance plan, in an amount not to exceed \$1,148,477, and for a term of three years, with an option to extend the term for up to three additional years.

SUMMARY:

- On May 15, 2018, the SFMTA Board of Directors approved the SFMTA’s Zero Emission Vehicle Policy resolution supporting its commitment to have an all-electric battery bus fleet by 2035. The policy mandates that the SFMTA only purchase all-electric battery buses starting in 2025.
- On November 21, 2018, the SFMTA Fleet Engineering issued an Request for Proposal (RFP) for procurement of up to nine 40-foot, low floor, battery electric coaches for a pilot program to evaluate the available zero-emission battery electric buses on the market and test their performance capabilities in San Francisco’s unique operating environment.
- On May 6, 2019, the SFMTA Fleet Engineering issued an RFP for the procurement of a battery electric bus chargers to support the battery electric bus pilot program.

ENCLOSURES:

1. SFMTA Board Resolution
2. Contract with ChargePoint, Inc.

APPROVALS:

DATE

DIRECTOR  _____

July 9, 2019

SECRETARY  _____

July 9, 2019

ASSIGNED SFMTAB CALENDAR DATE: July 16, 2019

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PURPOSE

The purpose of this calendar item is to request authorization for the Director of Transportation to execute Contract No. SFMTA-2019-57 with ChargePoint, Inc., to procure equipment for a bus charging solution, including charging dispensers, power converters, system warranty, an integrated cloud-based subscription service, spare parts, testing and commissioning of the charging solution, and service and maintenance plan, in an amount not to exceed \$1,148,477, and for a term of three years, with an option to extend the term for up to three additional years.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

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

Objective No. 3.4: Provide environmental stewardship to improve air quality, enhance resource efficiency, and address climate change.

This action supports the following SFMTA 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.

9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

DESCRIPTION

The SFMTA currently operates over 900 coaches which includes 650 hybrid electric coaches and 275 trolley coaches. In continued efforts to reduce the transportation sector carbon footprint, the Fleet Engineering staff of the SFMTA researched and reviewed the different technologies of the zero-emission transit buses, including battery electric and fuel cell electric bus technology. Staff determined that the battery electric bus technology best served the SFMTA and its current facilities in terms of future renovations and upgrades as opposed to fuel cell bus technology. Fuel Cell bus technology requires more space for the fueling infrastructure and significant facilities upgrades to store and maintain the buses as opposed to battery electric bus technology.

In May 2016, the SFMTA Fleet Engineering staff reviewed prototypes of five long-range battery electric bus manufacturers in an internal technical study to evaluate both their technology capabilities and their compliance with Federal Transit Administration Buy America requirements. The study identified three battery electric bus manufacturers that may meet the technological and Buy America requirements: New Flyer, Proterra Inc. and BYD.

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On May 15, 2018, the SFMTA Board of Directors approved the SFMTA's Zero Emission Vehicle Policy resolution committing to have an all-electric bus fleet by 2035. The policy outlines the SFMTA's commitment to start procuring zero emission battery buses to replace the electric hybrid vehicles by 2025, with a goal of achieving a 100% electric vehicle fleet by 2035. In an effort to continue making progress towards SFMTA's zero emission goal, the policy highlights following:

- **Green Zones:** The SFMTA has purchased new electric hybrid buses with higher capacity on-board battery systems. The increased on-board battery capacity will allow SFMTA to run a test program to operate "Green Zones" along several electric hybrid routes. The "Green Zones" will be serviced by electric hybrid vehicles operating entirely on battery power with the vehicle engine off, and will encompass up to 25% engine off, zero emission driving daily. Thus, the "Green Zones" will consist of portions of the routes experiencing zero emissions from the hybrid buses.
- **Battery Conversion:** The SFMTA will also explore the possibility of converting its existing hybrid vehicles into plug-in battery electric buses by replacing the hybrid diesel powertrains with a higher density battery packs. Once the conversion pilot is proven, this will pave the way towards a significant overhaul of our existing hybrid fleet further allowing us to expedite our zero emission goals.

On November 21, 2018, the SFMTA issued an RFP for the procurement of up to nine 40-foot, low floor, battery electric coaches as per the SFMTA's Zero Emission Vehicle Policy resolution. This procurement is for the SFMTA's battery electric bus pilot program, during which these coaches will be tested for one year in revenue service to allow the SFMTA to evaluate the available zero-emission battery electric buses on the market and test their performance capabilities in San Francisco's unique operating environment.

On December 14, 2018, the California Air Resources Board (CARB) approved the Innovative Clean Transit regulation (ICT), a first-of-its-kind regulation in the U.S. that sets a statewide goal for public transit agencies in California to gradually transition to 100% zero-emission bus (ZEB) fleets by 2040.

PROCUREMENT

On May 6, 2019, the SFMTA issued an RFP for Contract No. SFMTA-2019-57 for the procurement of the Woods Division battery electric bus charging solution to support the battery electric bus pilot program. The SFMTA received three proposals in response to the RFP from Electrical Design Technology, Inc, Proterra, Inc, and ChargePoint, Inc. Both technical and cost evaluation panel members evaluated the proposals and selected ChargePoint Inc. as the highest-ranking proposer.

Fleet Engineering staff will evaluate the performance and operation of the charging equipment during the pilot program. The performance and evaluation of the charging solution for battery electric buses is equally as important as the performance and evaluation of the battery electric buses themselves.

The procurement includes the complete charging solution, all structural and mounting hardware/equipment for all charging dispensers and power converters, full system warranty, an

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integrated cloud subscription service, a spare parts package, testing and commissioning of the charging solution, and service and maintenance plans.

Capital Projects and Construction will issue an invitation for bids for installation of the chargers.

STAKEHOLDER ENGAGEMENT

SFMTA Fleet Engineering staff worked with Vehicle Maintenance and Operations to discuss and evaluate the changes in maintenance practices and operating procedures involved with battery electric buses.

SFMTA Fleet Engineering staff is working with Facilities and Real Estate group to discuss and evaluate the facility infrastructure requirements involved with charging and supporting battery electric buses.

SFMTA Fleet Engineering staff is working with the Capital Projects and Construction team to install the charging solution at the Woods Yard.

ALTERNATIVES CONSIDERED

The SFMTA has decided to procure battery electric buses to replace the hybrid electric buses starting 2025. The alternative to authorizing Contract No. SFMTA 2019-57 would be to begin procurement of replacement coaches with this new zero-emission battery electric bus technology in 2025, with no prior experience or data with this technology operating in San Francisco. The SFMTA would not be able to evaluate the current battery electric buses available on the market in a pilot test program. It would further delay SFMTA's goal of moving toward a 100% zero emission fleet.

FUNDING IMPACT

The total cost for the contract is \$1,148,477. Funding for Contract No. SFMTA 2019-57 is available and the budget and sources of funding are outlined in the table below.

Total Project Cost Summary	Estimated Costs
Contract Cost for the Procurement of Charging Solution	\$1,100,000
Soft Costs	\$400,000
Total Project Cost	\$1,500,000

Funding Source Contract No: SFMTA-2019-57	Amount
Committed	
SFMTA-Operating-Facility-FY20	\$1,000,000
Caltrans-SB1-SGR-FY18	\$490,000
Federal funds	\$10,000

Total Committed	\$1,500,000
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ENVIRONMENTAL REVIEW

On June 14, 2019, the SFMTA, under authority delegated by the Planning Department, determined that Contract No. SFMTA-2019-57 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.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Contract Compliance Office has waived the SBE goal for this project due to the specialized nature of the work and lack of subcontracting opportunities.

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

The Civil Service Commission (PSC # 37047-18/19) provided approval for the contract on November 5, 2018.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize the Director of Transportation to execute Contract No. SFMTA 2019-57 with ChargePoint, Inc., to procure equipment for a bus charging solution, including charging dispensers, power converters, system warranty, an integrated cloud-based subscription service, spare parts, testing and commissioning of the charging solution, and service and maintenance plan, in an amount not to exceed \$1,148,477, and for a term of three years, with an option to extend the term for up to three additional years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On May 6, 2016, the SFMTA Fleet Engineering reviewed prototypes of five battery electric bus manufacturers in an internal technical study to evaluate both their long-range route technology capabilities and their compliance with Federal Transit Administration Buy America requirements; the study identified three battery electric bus manufacturers that may meet the technological and Buy America requirements: New Flyer, Proterra Inc. and BYD; and

WHEREAS, On May 15, 2018, the SFMTA Board of Directors approved the SFMTA's Zero Emission Vehicle Policy committing to have an all-electric bus fleet by 2035; to meet the goal, the SFMTA will only purchase all-electric buses starting in 2025; and

WHEREAS, On November 21, 2018, the SFMTA issued an RFP for the procurement of up to nine 40-foot, low floor, battery electric coaches for a one-year pilot program. during which these coaches will be tested for one year in revenue service to allow the SFMTA to evaluate the available zero-emission battery electric buses on the market and test their performance capabilities in San Francisco's unique operating environment; and

WHEREAS, On December 14, 2018, the California Air Resources Board (CARB) approved the Innovative Clean Transit regulation (ICT), a first-of-its-kind regulation in the U.S. that sets a statewide goal for public transit agencies in California to gradually transition to 100% zero-emission bus (ZEB) fleets by 2040; and

WHEREAS, On May 6, 2019, the SFMTA issued the RFP for Contract No. SFMTA-2019-57 for procurement of the Woods Division battery electric bus charging solution to support the SFMTA's battery electric bus pilot program; and

WHEREAS, The SFMTA received three proposals in response to the RFP from Electrical Design Technology, Inc, Proterra, Inc, and ChargePoint, Inc. Both technical and cost evaluation panel members evaluated the proposals and selected ChargePoint Inc. as the highest-ranking proposer; and

WHEREAS, Fleet Engineering staff will evaluate the performance and operation of the charging equipment as part of the electric bus pilot program; and

WHEREAS, Funding for this project will be provided by SFMTA Operating & Facility FY20 funds and Caltrans SB1 SGR FY18 funds; and

WHEREAS, The chargers will be installed through a construction contract issued by Capital Projects and Construction; and

WHEREAS, On June 14, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the Contract No. SFMTA-2019-57 is not a “project” under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

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

WHEREAS, The Contract Compliance Office (CCO) reviewed the RFP for this Project; due to the specialized nature of the work and lack of subcontracting opportunities, CCO waived the SBE goal; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA 2019-57 with ChargePoint, Inc., to procure equipment for a bus charging solution, including charging dispensers, power converters, system warranty, an integrated cloud-based subscription service, spare parts, testing and commissioning of the charging solution, and service and maintenance plan, in an amount not to exceed \$1,148,477, and for a term of three years, with an option to extend the term for up to three additional years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 16, 2019.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

Agreement between the City and County of San Francisco and

ChargePoint, Inc.

Contract No. SFMTA-2019-57

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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
ChargePoint, Inc.
Contract No. SFMTA-2019-57**

This Agreement is made this ____ day of _____, 2019, in the City and County of San Francisco, State of California, by and between ChargePoint, Inc., a Delaware corporation (Contractor), and the City and County of San Francisco (City), a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

The SFMTA wishes to procure equipment and services for the Woods Division Battery Electric Bus (BEB) Charging Solution Project, including charging dispensers, power converters, system warranty, an integrated cloud subscription service, spare parts, testing and commissioning of the charging solution, and service and maintenance plans.

This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on May 6, 2019, pursuant to which City selected Contractor as the highest-qualified scorer.

There is no Small Business Enterprise (SBE) subcontracting participation requirement for this Agreement.

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

Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 37047-18/19 on November 5, 2018.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

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

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

1.2. “CCO” means SFMTA Contract Compliance Office.

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

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

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

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

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

1.8. “Contractor” or “Consultant” means ChargePoint, Inc.

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

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

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

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

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

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

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

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

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

Article 2 Term of the Agreement

2.1. The term of this Agreement shall commence on the later of: (i) July 16, 2019; or (ii) the Effective Date, and expire on July 16, 2022, unless earlier terminated as otherwise provided herein.

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

Article 3 Financial Matters

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

Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.3. Compensation.

3.3.1. Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B (Calculation of Charges), attached hereto and incorporated by reference as though fully set forth herein. Compensation shall be made for Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed One Million, One Hundred Forty-Eight Thousand, Four Hundred Seventy-Seven Dollars (\$1,148,477). The breakdown of charges associated with this Agreement appears in Appendix B. The City may withhold a portion of payment as retention until conclusion of the Agreement, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

3.3.2. 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.

3.3.3. 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.

3.3.4. Invoice Format. 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 electronic address specified in Section 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5. Reserved. (LBE Payment and Utilization Tracking System).

3.3.6. 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.

3.3.7. Grant-Funded Contracts.

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

(b) **FTA Requirements.** The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Appendix C are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence..

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

Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5. Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6. Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

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

4.2. 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 applicable terms of Article 10 (Additional Requirements Incorporated by Reference) of this Agreement, and the FTA Requirements (Exhibit C). Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2. Contractor intends to employ subcontractors for its service and maintenance plan.

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

Article 5 Insurance and Indemnity

5.1. Insurance.

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

- (a)** Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (b)** Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; 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.

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

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

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

5.1.3. All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover 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 of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

5.1.7. Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements 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.

5.1.8. The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.9. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and

County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

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

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

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

Article 6 Liability of the Parties

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

INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

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

Article 7 Payment of Taxes

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

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

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

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

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

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

Article 8 Termination and Default

8.1. Termination for Convenience

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

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

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

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

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

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

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

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

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

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services the SFMTA has not already tendered payment. Reasonable costs may 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
- Article 13 Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default 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 to the address set forth in Article 11, and in the manner prescribed in Article 11.

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

8.4. Rights and Duties upon Termination or Expiration.

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

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

8.4.2. Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver

in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

9.1. License Granted. Contractor grants City a perpetual, nonexclusive, non-transferable license to use, retain, and reproduce at all locations controlled by SFMTA, for internal use only, all copies (whether in hard copy or electronic format) of drawings, plans, specifications, schematics, studies, reports, memoranda, computation sheets and all other documents that are (i) prepared by Contractor or its subcontractors or suppliers (but not exclusively for City); and (ii) required to be provided to City in connection with this Agreement. Contractor hereby warrants that it has title to and/or the authority to grant a license of such deliverables to the City.

9.2. Proprietary Materials. To the extent that the Contractor considers any document or deliverable to be a trade secret or otherwise proprietary, Contractor shall so mark them. SFMTA shall require individuals using such proprietary documents to maintain the confidentiality of the documents, and if necessary, sign a confidentiality agreement regarding use of highly sensitive documents. Alternatively, at SFMTA's request, documents shall be placed in escrow, along with source codes, as described in subsection 26.2.1 above. Contractor shall hold the City harmless from and defend the City against all claims, suits or other proceedings instituted against the City for copyright infringement, misuse or misappropriation of a trade secret, or for access to the documents or deliverables under the City's Sunshine Ordinance or the California Public Records Act. Contractor will pay the costs and damages awarded in any such action or proceeding, or the cost of settling such action or proceeding, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the buses, spare parts, documents or deliverables constitutes infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

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. Small Business Enterprise Program.

10.6.1. General. The SFMTA is committed to a Small Business Enterprise Program (SBE Program) for the participation of SBEs in contracting opportunities. In addition, the Consultant must comply with all applicable federal regulations regarding Small Business Enterprise (SBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement. More information on federal SBE requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

10.6.2. Compliance with SBE Program. Consultant shall comply with the SBE provisions contained in Appendix C attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the

SBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Consultant to comply with any of these requirements shall be deemed a material breach of this Agreement.

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

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

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

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

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701).

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>. 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.

10.19. Reserved. (Preservative Treated Wood Products).

Article 11 General Provisions

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

To City: Bhavin Khatri
 Project Manager, Transit
 700 Pennsylvania Avenue
 San Francisco, CA 94107
 Bhavin.khatri@sfmta.com

To Contractor: Leah O'Dwyer
 ChargePoint, Inc.
 254 East Hacienda Avenue
 Campbell, CA 95008
 leah.odwyer@chargepoint.com

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

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

11.3. Reserved.

11.4. Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such

records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

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

11.6. Dispute Resolution Procedure.

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

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

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

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

11.9. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. 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, including amendments, the RFP, and Contractor's proposal dated May 13, 2019. 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, the order of precedence shall be (a) this Agreement and any amendments, (b) the RFP, and (c) 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).

13.3. Reserved. (Business Associate Agreement).

Article 14 MacBride Principles And Signature

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

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>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>ChargePoint, Inc.</p> <hr/> <p>Rex S. Jackson Chief Financial Officer</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier number: 0000023056</p>
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Appendices

A: Scope of Work.....A-1
 B: Calculation of Charges.....B-1
 C: FTA RequirementsC-1

Appendix A

Scope of Work

1. Description of Services

The Contractor shall design and deliver a modular charging solution for nine battery-electric buses at the SFMTA's Woods Division, consisting of nine charging dispensers, nine power converters, and any other DC electrical distribution equipment required. The complete charging solution includes all structural and mounting hardware/equipment for all charging dispensers and power converters, as well as a full system warranty, an integrated cloud subscription service, a spare parts package, testing and commissioning of the charging solution, and service and maintenance plans (ChargePoint Express Depot Solution).

The SFMTA intends to procure nine battery-electric buses from at least two different manufacturers, including Proterra, BYD, and New Flyer, that utilize the combined charging system (CCS) Type 1 standard. The Contractor shall work with these bus OEMs to ensure compatibility with their charging solution. This charging solution must meet the technical requirements described below. The charging solution will be installed by a third party vendor who will be selected by the SFMTA in a separate procurement. The Contractor must provide technical support during installation to the vendor who is performing the installation task. The Contractor must perform final testing and commissioning in coordination with the installation work provided by the third party vendor.

The Contractor shall provide a detailed installation package consisting of all required drawings, installation instructions, diagrams, testing and commissioning plans, operating and maintenance manuals, parts manuals, and all other relevant documents that are required to install the charging solution. This includes a product description, proposed configuration layout with dimensions, potential for expansion, and any other essential information regarding the procurement of electric vehicle supply equipment.

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

The following are work tasks and requirements assumed necessary to deliver the desired vehicle charging solution.

A. Draft Project Work Plan

At least one week prior to the Project kick-off meeting, the Contractor shall submit a Draft Work Plan that will:

- delineate the team's roles and responsibilities for all deliverables, services, and task milestones;
- establish a detailed schedule for all deliverables, services, and task milestones; and
- document communications protocols between Contractor and the SFMTA

B. Final Project Work Plan

Within one week following the Project Kick-off Meeting, the Contractor shall submit a Final Project Work Plan to the SFMTA that incorporates any edits suggested by the SFMTA for the draft work plan. The SFMTA will finalize the acceptance of the Final Work Plan at the first bi-weekly meeting/call.

C. Detailed Design Specifications and System Drawings Package

The Contractor shall provide a package for SFMTA review consisting of detailed design specifications and performance specifications for nine power converters and nine dispensers. This package shall also include technical documents, layout drawings, and structural drawings for seismic-rated mounting hardware as required by any codes or local ordinances for all hardware included in the Proposal.

The Contractor must receive SFMTA approval for the final detailed design specifications and system drawings package before providing the hardware detailed within the package.

D. Installation Instructions and Drawings Package

The Contractor shall provide a detailed installation package for SFMTA review, consisting of all required drawings, installation instructions, diagrams, testing and commissioning plans, operating and maintenance manuals, parts manuals, and all other relevant documents that are required to install the ChargePoint Express Depot Solution. This includes a product description, proposed configuration layout with dimensions, potential for expansion, and any other essential information regarding the procurement of electric vehicle supply equipment.

The Contractor must receive SFMTA approval for the final installation instructions and drawings package before providing the hardware detailed within the package.

E. Testing, Commissioning, and Technical Support Plan

The Contractor shall provide for SFMTA approval a commissioning plan for all supplied equipment that shall include detailed instructions and requirements for testing and commissioning the charging system (i.e., dispensers, power converters, mounting hardware and equipment, and all required wires, cables and connections).

The Contractor shall include in the plan a list of activities to be performed by a third party vendor during installation that would require technical support, and provide details on how the Contractor plans to provide technical support for these activities.

The Contractor shall ensure UL Certification/Listing is achieved for the ChargePoint Express Depot Solution before the equipment is installed and commissioned.

F. Operating, Maintenance, and Parts Manuals for ChargePoint Express Depot Solution

The Contractor shall provide operating, maintenance, and parts manuals for the ChargePoint Express Depot Solution. The supplied manuals shall provide complete, concise and clear

documentation for all equipment included with the ChargePoint Express Depot Solution, and shall not include superfluous documentation for equipment that was not provided with the ChargePoint Express Depot Solution. In addition to the printed copies of the manuals specified above, all maintenance, operations, and illustrated parts manuals shall be provided in digital format. Release copies of the manuals shall reflect the most recent information available at the time of their release and shall be delivered to the SFMTA on or before delivery of the ChargePoint Express Depot Solution. The Contractor shall provide the following quantities of manuals:

Manuals	Quantity	Maintain up-to-date after the date of acceptance of the ChargePoint Express Depot Solution
Maintenance Manual	3	2 years
Parts Manual	3	12 years
Operator's Manuals	10	2 years

G. Nine Power Converters and All Associated Hardware

The Contractor shall provide nine power converters and nine DC distribution boxes, along with all associated hardware. The power converters shall be compliant with all technical requirements found in Section Q, Technical Requirements.

H. Nine Power Dispensers and All Associated Hardware

The Contractor shall provide nine power dispensers, along with all associated hardware, with an option to purchase two additional power dispensers, along with all associated hardware. The power dispensers shall be compliant with all technical requirements found in Section Q, Technical Requirements.

I. Frames and Mounting Hardware for Mounting Nine Power Converters

The Contractor shall provide nine mounting frames to accommodate the power converters. The mounting frames shall be compliant with all technical requirements and shall accommodate the layout included in the power converter arrangement drawing included in Section Q, Technical Requirements.

J. Nine Power Dispenser Pedestals

The Contractor shall provide nine power dispenser pedestals for mounting the power dispensers with an option to purchase two additional power dispenser pedestals. The pedestals shall be compliant with all technical requirements found in Section Q, Technical Requirements.

K. Final Testing, Commissioning, and Technical Support during Installation

The SFMTA will inform the Contractor of the identity of the third party vendor who will install the ChargePoint Express Depot Solution, and will provide the final installation schedule to the

Contractor as soon as it becomes available. The Contractor shall be responsible to perform final testing and commissioning of the ChargePoint Express Depot Solution in coordination with the third party vendor. In addition, the Contractor must provide technical support during installation to the third party vendor.

L. Two-Year Cloud Service Subscription

The Contractor shall provide a two-year cloud service subscription capable of supporting a minimum of 10 simultaneous users. The cloud service subscription shall be compliant with all technical requirements found in Section Q, Technical Requirements.

The delivery of the cloud service subscription includes the delivery of the full integration with ViriCiti.

M. Training for SFMTA Personnel

The Contractor shall provide 40 hours of classroom training and must be capable of accommodating at least 10 students per class. The training shall be compliant with all technical requirements found in Section Q, Technical Requirements.

The Contractor shall provide the training syllabus and all training material for review and approval by the SFMTA Project Manager prior to commencement of training. Contractor shall provide all necessary equipment to facilitate the training.

The SFMTA will specify the time and location for the on-site training.

N. Spare Parts Package

The spare parts package shall include, but not be limited to, all items listed in Section Q, Technical Requirements. The spare parts shall be delivered in a single shipment to the SFMTA at a location of the SFMTA's choosing.

O. Two-Year Warranty

The Contractor shall provide a two-year warranty, which shall conform to the terms listed below.

1. Warranty Requirements

The Contractor shall provide the following warranties in addition to any statutory remedies or warranties imposed on the Contractor. Consistent with this requirement, the Contractor shall warrant and guarantee to the SFMTA each complete charging system solution and components according to the following provisions:

The Contractor shall ensure in its procurement arrangements that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, and subcontractors. Any inconsistency or difference between the warranties extended to the SFMTA by the Contractor and those extended to the Contractor by its suppliers, vendors, and subcontractors, shall be at the risk and expense of the Contractor. Such inconsistency or

difference shall not excuse the Contractor's full compliance with its obligations under the Contract.

Upon request of the SFMTA, the Contractor promptly shall provide to the Project Manager complete copies of written warranties or guarantees and of documentation of any other arrangement relating to such warranties or guarantees extended by the Contractor's suppliers, sub suppliers, vendors, and subcontractors covering parts, components, and systems utilized for the ChargePoint Express Depot Solution. If any vendor/supplier to the Contractor offers a warranty on a component that is longer or more comprehensive than the required warranties stated in Figure O-1, the Contractor shall inform the SFMTA of this additional warranty and pass it through to the SFMTA at no additional cost to the SFMTA.

The Contractor shall ensure that such suppliers, subsuppliers, vendors, and subcontractors satisfactorily perform warranty-related work.

a. Complete Charging System

The complete ChargePoint Express Depot Solution shall be warranted and guaranteed to be free from defects and related defects for two years, beginning on the date of the final testing and commissioning of the ChargePoint Express Depot Solution. During this warranty period, the ChargePoint Express Depot Solution shall maintain its structural and functional integrity. The warranty shall be based on regular operation of the ChargePoint Express Depot Solution under the operating conditions prevailing in the SFMTA's yard.

b. Subsystems and Components

Specific subsystems and components shall be warranted and guaranteed to be free from defects and related defects as provided in Figure O-1 (Component Warranty). Contractor shall provide a limited extended warranty available from all subsuppliers to meet the periods in Figure O-1, beginning on the date of final testing and commissioning of the ChargePoint Express Depot Solution.

2. Voiding of Warranty

The warranty shall not apply to any part or component of the ChargePoint Express Depot Solution that has failed as a direct result of misuse, negligence, or accident, or that has been repaired or altered in any way so as to affect adversely its performance or reliability, except insofar as such repairs were in accordance with the Contractor's maintenance manuals and the workmanship was in accordance with recognized standards of the industry.

FIGURE O-1 COMPONENT WARRANTY

Items	Description	Years
1	Power Converters and All Associated Hardware	2
2	Power Dispensers and All Associated Hardware	2
3	Frames and Mounting Hardware for Power Converters	2
4	Power Dispenser and Pedestals	2

3. Exceptions to Warranty

The warranty shall not apply to scheduled maintenance items and items furnished by the SFMTA, except insofar as such equipment may be damaged by the failure of a part or component for which the Contractor is responsible.

4. Detection of Defects

If the SFMTA detects a defect within the warranty periods set forth above, it shall notify the Contractor's representative within a reasonable time after discovery of the defect. Within three 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 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. Work necessary to commence the inspection or repairs under the provisions of Section 5 (Repair Procedures), shall commence within two working days after receipt of notification by the Contractor, unless such time is extended by the SFMTA, and shall be conducted in accordance with Section 5.a (Repairs by Contractor). The manufacturer or supplier shall report specific details about each repair to the SFMTA within 24 hours of said repair.

If the SFMTA and Contractor are unable to agree whether a defect is covered by the warranty provisions, the SFMTA may direct the Contractor to commence repairs in accordance with Section 5.a, pending agreement by the SFMTA and Contractor whether the repairs are covered by the warranty provisions. The Contractor shall promptly comply with such a request by the SFMTA.

5. Repair Procedures

The Contractor shall be responsible for all warranty-covered repair work. The Contractor or its designated representative shall secure parts and perform all affected warranty repair 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.

a. Repairs by Contractor

When the SFMTA requires the Contractor to perform warranty-covered repairs, the Contractor's representative must begin work necessary to effect repairs in a proper

and timely manner, within 48 hours after receiving notification of a defect from the SFMTA. Whenever the Contractor makes warranty repairs, new parts, subcomponents and subsystems shall be used, unless the repair of original parts is authorized in writing by the SFMTA. The SFMTA shall make the ChargePoint Express Depot Solution equipment available to complete repairs timely with the Contractor's repair schedule.

While under warranty, the Contractor shall provide, at its own expense, all spare parts, labor, tools and space required to complete repairs with the exception of repairs for incorrect physical mounting, electrical wiring, performance issues related to cellular or Wi-Fi repeaters, or other devices installed in connection with the equipment. At the SFMTA's option, if feasible and mutually agreed upon, the Contractor shall repair the ChargePoint Express Depot Solution equipment at an offsite location, and not on the SFMTA property.

b. Warranty after Replacement of Repairs

The warranty on parts, components or subsystems replaced as a result of a standard warranty repair shall have the unexpired warranty period of the original subsystem, effective on the replacement date. Extended warranties shall begin on the date of the repair or replacement of the parts, components, or subsystems.

P. Two-Year Service and Maintenance Plan

The Contractor shall provide a draft two-year service and maintenance plan for the SFMTA's review and approval. The Contractor shall be responsible for all preventative and corrective maintenance, routine cleanings, and on-call support for the ChargePoint Express Depot Solution. The Contractor shall respond to and resolve all service requests within 48 hours.

Q. Technical Requirements

1. Overall Requirements

The SFMTA seeks to procure a modular ChargePoint Express Depot Solution for nine electric buses at the SFMTA's Woods Division, consisting of nine charging dispensers and nine power converters. This DC charging infrastructure solution will be required to meet all specifications in the following sections.

2. Power Converter Specifications

The nine DC power converters shall be modular in design. Each individual DC power converter shall consist of five 31.25kW power modules each for a maximum scalability of 150kW for the maximum output power. Each individual power converter's dimensions, not including any mounting hardware, shall not exceed 3'4" x 4' 2" x 7' 3" (Width x Depth x Height). Each DC power converter shall be provided with mounting frames and/or hardware and shall be capable of being installed as shown in the attached drawing (please see subsection: 8. Power Converter Arrangement Drawing). The supplier shall provide a distribution box for each of the power converters for future expansion of the ChargePoint

Express Depot Solution. The supplier shall also provide all required interfaces to connect the power converters together in the configuration specified by the SFMTA.

3. Power Dispenser Specifications

The power dispensers will be mounted adjacent to the western retaining wall at the Woods Maintenance Facility and shall be able to connect to the centralized location of the power converters up to 100 meters (330 feet) away. The emergency shut-off switch for the ChargePoint Express Depot Solution will be installed near the power converters. The emergency shut-off switch shall cut off power to all dispensers and converters. The failure of one module in the power converter or failure of a power converter shall not disable the use of other power blocks in the charging station system. The Contractor shall work with the SFMTA to develop a layout for the ChargePoint Express Depot Solution within the Woods Maintenance Facility.

The nine power dispensers with charging cables shall be compliant with SAE J1772 and shall have CCS Type 1 connectors. Dispensers dimensions not including any mounting hardware shall not exceed 2' 3" x 1' 3" x 3' 4" (Width x Depth x Height). The charging cable length must be at least 20ft. Each power dispenser shall be provided with hardware and pedestals for mounting. The CCS Type 1 charging cable assembly shall have a retractable mechanism for safe and proper storing.

All power converters and power dispensers shall act as an integrated system and shall be capable of remote troubleshooting, diagnostics, and scheduled and on-demand charging. The power converters and power dispensers shall be connected via CAT 5 cables and shall have WiFi and/or cellular capabilities.

4. Cloud Based Subscription Service

Contractor shall supply a two-year cloud based subscription service, which shall provide troubleshooting, diagnostics, remote charging status on a per-dispenser level, and energy consumption data. The cloud service license shall be accessible on mobile devices and shall allow for a minimum of 10 simultaneous users. The cloud service shall broadcast charging information from the Contractor's ChargePoint Express Depot Solution through OCPP 1.6 protocol or above. The Contractor shall provide the necessary data and integration requirements to capture charger operational data in real time for smart charging. Smart charging will integrate all vehicle data, planning, utility information and other data sources. Smart charging shall include, but not be limited to, load balance between chargers, the ability to set maximum demand limit, integration of vehicle planning, prioritization of charge sessions manually, avoidance of peak time-of-use periods, real time status of chargers, KPI charge reports, remote reset of chargers, and automated incident reporting.

The ChargePoint Express Depot Solution shall integrate with ViriCiti's telematics platform. The Contractor shall ensure that ViriCiti receives all broadcasted charging information from the Contractor's ChargePoint Express Depot Solution through OCPP 1.6 protocol or above. In addition, the Contractor may use their own API to provide information to ViriCiti,

provided that the Contractor ensures that ViriCiti is capable of interfacing with the API. The Contractor shall work with ViriCiti to provide the necessary data and interface requirements to capture charger operational data in real time for integration with ViriCiti's telematics platform for smart charging. Charge station monitoring through ViriCiti shall be capable of detecting technical faults, such as when the vehicles are not charging as they should be, always available real-time status of the chargers, and automatic alerts for when the chargers are not functioning as they should. Charge station monitoring shall include, but not be limited to, uptime monitoring of all chargers, KPI charge reports, automated incident reporting, real time status of chargers, KPI charge reports, and automated incident reporting.

Contractor warrants that the cloud-based subscription service shall operate in compliance with the above requirements for the entire subscription period.

5. Final Testing, Commissioning, and Technical Support during Installation

Technical support during construction shall include support during design review and reviewing construction packages and installation documents. The Contractor may be required to interface with PG&E, SFPUC, and general contractors.

The Contractor shall provide UL Certification/Listing for the ChargePoint Express Depot Solution before the equipment is installed and commissioned.

At the time of testing and commissioning, Contractor shall submit a written report to the SFMTA listing all incidents and unusual system performance issues.

Commissioning and testing involves ensuring that the ChargePoint Express Depot Solution integrates with and charges a test bus, and that there are no physical obstructions blocking the use of the ChargePoint Express Depot Solution. In addition, the Contractor must demonstrate the successful operation of its cloud-based subscription service is fully functional.

6. Training

Contractor shall provide 40 hours of training for the SFMTA maintenance personnel upon initial system installation and for future maintenance of the system. The training plan shall consist of the following details: description of the courses, suggested attendees, course length and suggested timing. The SFMTA reserves the right to modify the proposed training plan to meet the needs of the Agency. The instructor must be capable of training 10 SFMTA personnel simultaneously in each course. In addition, the Contractor must provide a one-hour bi-annual webinar for new SFMTA employees and a refresher course within 60 Days before expiration of the warranty.

The Contractor shall provide the training syllabus and all training material for review and approval by the SFMTA Project Manager prior to commencement of training. Contractor shall provide all necessary equipment to facilitate the training.

The SFMTA will specify the time and location for delivery for the on-site training courses at a later date after consulting with the Contractor for availability.

7. Spare Parts

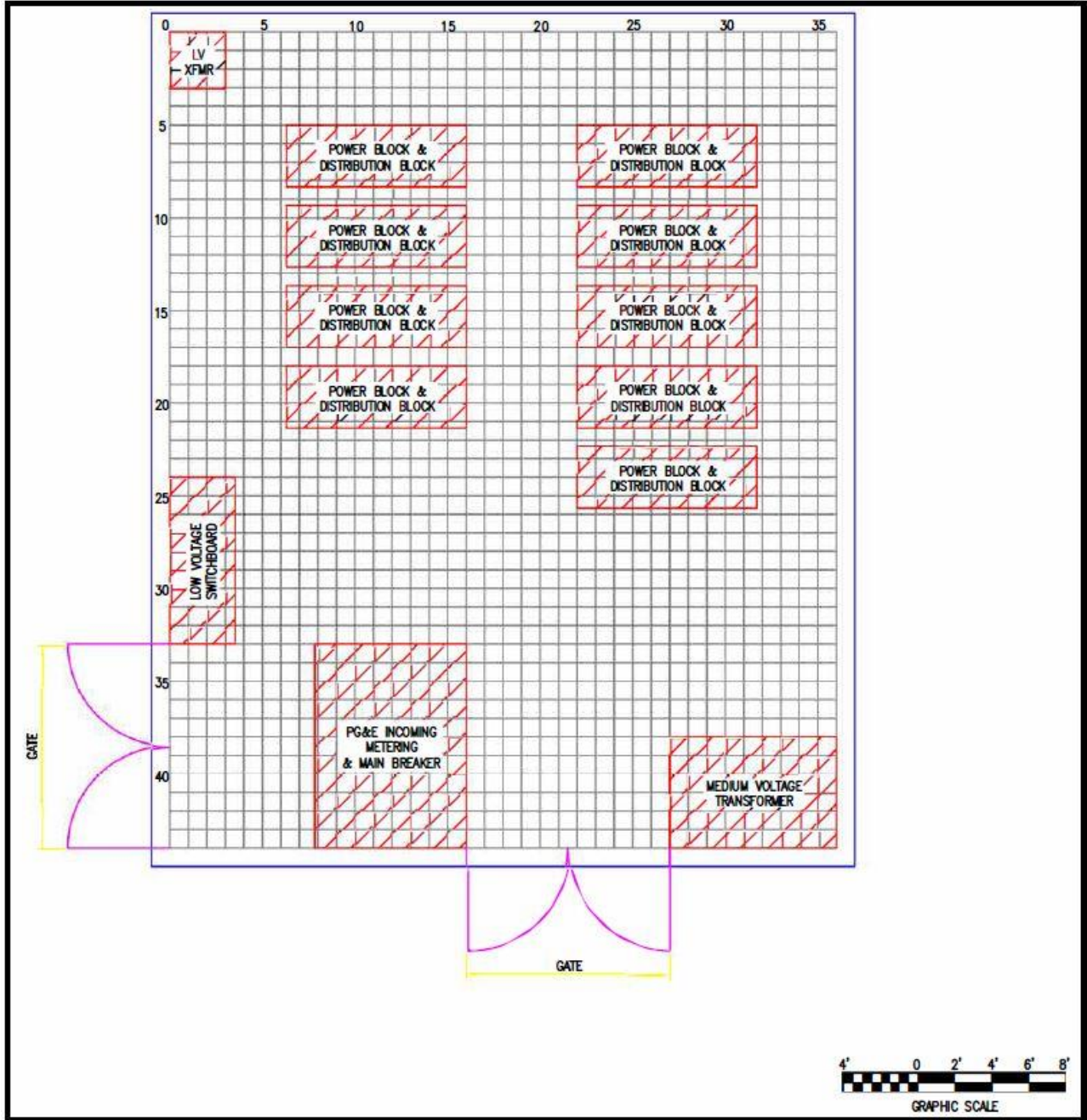
The spare parts package shall consist of the following:

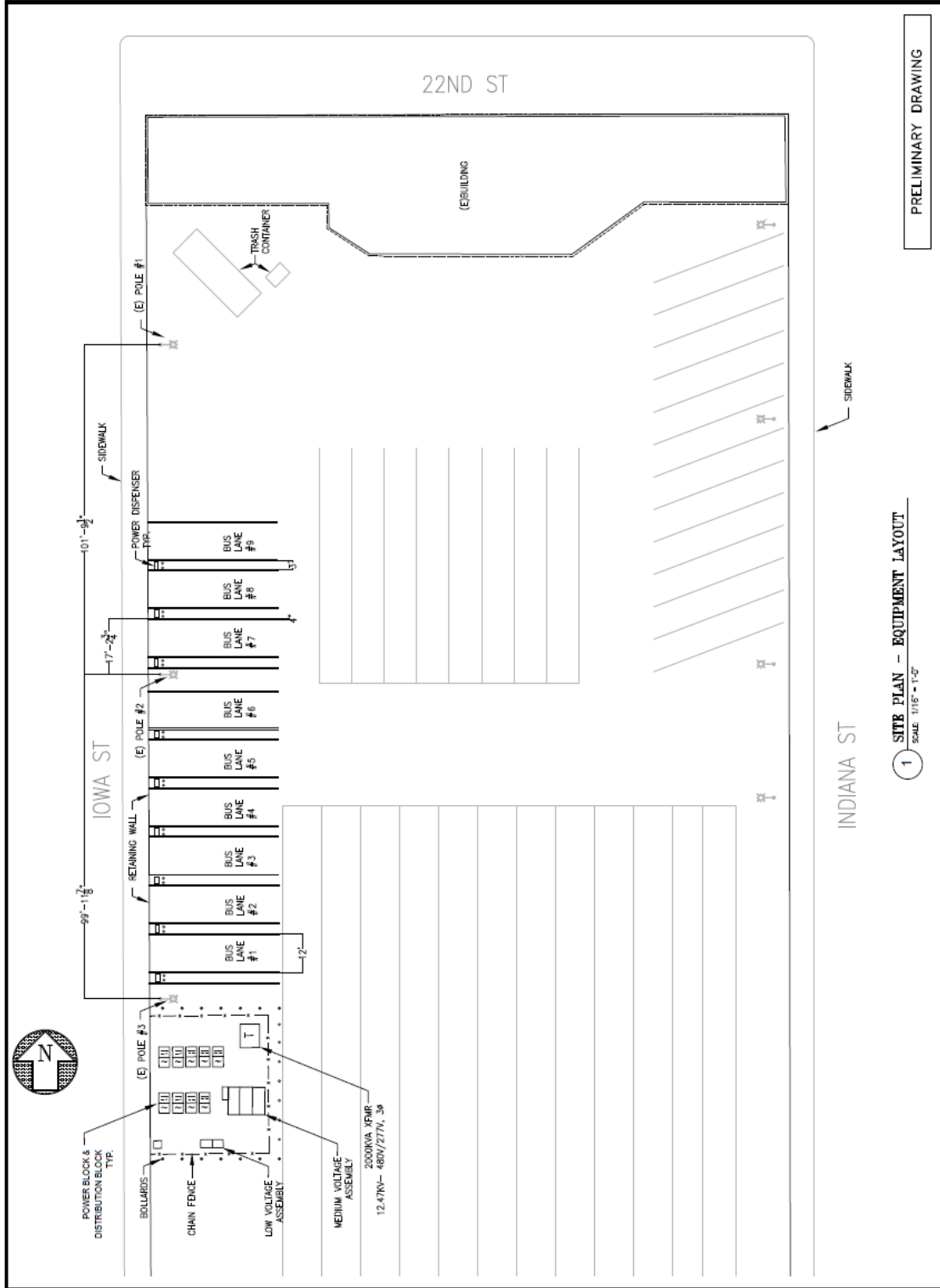
- One complete dispenser assembly
- Two complete replacement power modules
- Three replacement CCS Type 1 connectors
- Three replacement charging cables for the dispenser

Contractor shall deliver the spare parts in a single shipment to the location designated by the SFMTA.

8. Power Converter Arrangement Drawings

The power converters and distribution cabinets shall be arranged as per the following drawing:





2. Schedule

<u>Deliverable</u>	<u>Due Date/Delivery Date</u>
A. Draft project work plan	1 week prior to Kick-off meeting
B. Final project work plan	1 week after kick-off meeting
C. Detailed design specifications and system drawings package	60 days after NTP
D. Installation instructions and drawings package	60 days after NTP
E. Testing, commissioning, and technical support plan	60 days after NTP
F. Operating, maintenance, and parts manuals for ChargePoint Express Depot Solution	Upon completion of commissioning and testing
G. Nine power converters and all associated hardware	February 28, 2020*
H. Nine power dispensers and all associated hardware	February 28, 2020*
I. Frames and mounting hardware for mounting nine power converters	February 28, 2020*
J. Nine power dispenser pedestals	February 28, 2020*
K. Final testing, commissioning, and technical support during installation	As needed during the duration of construction
L. Two-year cloud service subscription <ul style="list-style-type: none"> • <i>(NOTE: delivery of cloud service includes the delivery of the full integration with ViriCiti.)</i> 	Upon completion of commissioning and testing
M. Training for SFMTA personnel	Upon completion of commissioning and testing
N. Spare parts package	Upon completion of commissioning and testing
O. Two-year warranty	Upon completion of commissioning and testing
P. Two-year service/maintenance plan	Upon completion of commissioning and testing

* The delivery of the ChargePoint Express Depot Solution, including all equipment and mounting hardware, shall be coordinated with the third party vendor (to be selected by the SFMTA in a separate procurement) responsible for the installation of this ChargePoint Express Depot Solution. The Contractor shall be prepared to deliver the ChargePoint Express Depot Solution to the Woods Operation Yard at 1001 22nd Street, San Francisco, CA 94107 (between Iowa Street and Indiana Street) on an agreed upon date on or after February 28, 2020.

3. Milestone Payment Schedule

The SFMTA will make progress payments upon satisfactory completion of each milestone in accordance with the percentage allocation below.

Milestone	Maximum Percent of Items 1 and 2 in Appendix B
(a) Acceptance of Deliverables D and E	10% of Unit Price
(b) Acceptance of Deliverables G, H, I and J	70% of Unit Price
(c) Acceptance of Deliverable K	15% of Unit Price
(d) Acceptance of all other deliverables	5% of Unit Price

Line Item 3 in Appendix B - Two Year Cloud Service Subscription, Including Full ViriCiti Integration

The SFMTA will make payment for the two-year cloud service subscription upon receipt of login information for the cloud. The SFMTA shall notify the Contractor of the start date for the cloud subscription service.

Line Item 4 in Appendix B – Testing, Commissioning and Technical Support

The SFMTA shall pay for testing, commissioning and technical support once the ChargePoint Express Depot Solution is fully accepted.

Line Item 5 in Appendix B – Training

The SFMTA shall provide payment for each completed training course as invoiced.

Line Item 6 in Appendix B - Spare Parts

The SFMTA will make payments for spare parts after all spare parts have been delivered and accepted.

Line Item 7 in Appendix B – Two-Year Service and Maintenance Plan

The SFMTA shall indicate to the Contractor the start of the two-year service and maintenance plan. The SFMTA will make payments for the service and maintenance plan as outlined below.

Two-Year Service and Maintenance Plan	Line Item 7
(a) Upon completion of commissioning and testing	50% of Unit Price
(b) At the end of the two-year service and maintenance plan	50% of Unit Price

4. Location of Work

Woods Operation Yard: 1001 22nd Street, San Francisco, CA 94107 (between Iowa Street and Indiana Street)

5. 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.

6. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the **SFMTA** will be Bhavin Khatri.

Appendix B

Calculation of Charges

City is exempt from federal excise taxes. State, local sales, and use taxes are not included in these prices.

No.	Qty.	Description	Unit Price	Total Price
1.	9	Power Converters (price to include mounting frames, a distribution box and all required hardware and as-needed engineering support during construction and two-year warranty plan)	\$ 83,254.89	\$ 749,294
2.	9	Power Dispensers (price to include pedestal and all required hardware and as-needed engineering support during construction and two-year warranty plan)	\$ 13,331.33	\$ 119,982
3.	1	Two year cloud service subscription, including full ViriCiti integration	N/A	\$ 26,076
4.	1	Testing, Commissioning and Technical Support During Installation	N/A	\$ 100,800
5.	1	Training package	N/A	\$ 7,200
6.	1	Spare parts package	N/A	\$ 30,375
7.	1	Two-year service and maintenance plan	N/A	\$ 114,750
Basis of Award (Items 1 through 7)			Grand Total	\$ 1,148,477

Appendix C

FTA REQUIREMENTS FOR FEDERALLY FUNDED PERSONAL SERVICES AND PROCUREMENT CONTRACTS

I. DEFINITIONS

A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

G. Government means the United States of America and any executive department or agency thereof.

H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

M. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FEDERAL CHANGES

A. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

III. ACCESS TO RECORDS

A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

IV. DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

VII. DBE/SBE ASSURANCES

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

VIII. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by FTA – not applicable to this contract*)

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or

instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

IX. RIGHTS IN DATA AND COPYRIGHTS (Applicable to contracts for planning, research, or development financed by FTA— *not applicable to this contract*)

A. Definition. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

B. Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of this Agreement.

1. Publication of Data. Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

2. Federal License. In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.

3. FTA Intention. When FTA awards Federal assistance for a experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government

may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

4. Hold Harmless. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

5. Restrictions on Access to Patent Rights. Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

6. Application to Data Incorporated into Work. The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

7. Application to Subcontractors. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

C. Provision of Rights to Government. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

D. Flow Down. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

X. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or

permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

D. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

XI. ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

XII. CLEAN WATER REQUIREMENTS (*applicable to all contracts in excess of \$100,000*)

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XIII. CLEAN AIR (*applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.*)

A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XIV. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and

criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XV. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

XVI. TERMINATION FOR CONVENIENCE OF CITY (required for all contracts in excess of \$10,000)

See Agreement Terms and Conditions.

XVII. TERMINATION FOR DEFAULT (*required for all contracts in excess of \$10,000*)

See Agreement Terms and Conditions.

XVIII. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XIX. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XX. RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but

not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XXI. BUS TESTING – RESERVED (*applies to contracts for rolling stock*)

XXII. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS - RESERVED
(*applies to contracts for rolling stock*)

XXIII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XXIV. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XXV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated

by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

XXVI. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (*applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator*)

A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

XXVII. NATIONAL ITS ARCHITECTURE POLICY (*Applicable to contracts for ITS projects*)

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23

U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXVIII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

XXIX. SEAT BELT USE

In compliance with Executive Order 13043 "Increasing Seat Belt Use in the United States", April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.