

THIS PRINT COVERS CALENDAR ITEM NO. : 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs & Construction

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute the Amended and Restated Agreement #A06/07-34 for the Van Ness Bus Rapid Transit Project between the San Francisco County Transportation Authority and the City and County of San Francisco, through its Municipal Transportation Agency and its Planning Department, in an amount not to exceed \$534,531.

SUMMARY:

- In June 2008, the San Francisco County Transportation Authority (Authority) entered into an agreement with the City (the Original Agreement) to set out respective roles and responsibilities for environmental review of the Van Ness BRT Project (the Project).
- The Final Environmental Impact Report/Environmental Impact Study (EIR/EIS) was approved in September 2013. The Parties have subsequently agreed that SFMTA shall take the lead for further developing and implementing the Project, including completing the 30% engineering design documents that the Original Agreement designated as a task to be completed by the Authority.
- The parties desire to amend and restate the Original Agreement to provide for the new roles and responsibilities of the SFMTA and Authority.
- The restated Agreement also provides for reimbursement to the Authority for \$434,531 in FTA grant funds for work performed by the Authority and its consultants, and reimbursement of up to \$100,000 of additional costs to be incurred by Authority in supporting SFMTA's efforts during Phase 1B of the Project, as defined in this Agreement.
- The restated Agreement further provides for reimbursement of up to \$349,362 in Proposition K funds for work done by SFMTA.

ENCLOSURES:

1. SFMTAB Resolution
2. Agreement (including Appendix A-1 and A-2 only)

APPROVALS:

DATE

DIRECTOR _____ 2/10/14

SECRETARY _____ 2/10/14

ASSIGNED SFMTAB CALENDAR DATE: February 18, 2014

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PURPOSE

The purpose of this calendar item is for the SFMTA Board of Directors to authorize the Director of Transportation to execute the Amended and Restated Agreement between the City, through the SFMTA and the Planning Department, and the San Francisco County Transportation Authority (Authority) for the Van Ness BRT Project (the Project).

GOAL

The Project would assist in meeting or furthering the following goals of the SFMTA Strategic Plan:

Goal 1: Create a safer transportation experience for everyone

Objective 1.1: Improve security for transportation system users

Objective 1.3: Improve the safety of the transportation system

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

Objective 2.1: Improve customer service & communications

Objective 2.2: Improve transit performance

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

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

Objective 3.1: Reduce the Agency's and the transportation system's resource consumption, emissions, waste, and noise

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

Objective 3.3: Allocate capital resources effectively

Objective 3.4: Deliver services efficiently

Objective 3.5: Reduce capital and operating structural deficits

DESCRIPTION

The Project is a large scale plan to implement "full-feature" bus rapid transit (BRT) on Van Ness Avenue, one of the busiest transit routes in the City and a major "north-south" transportation corridor for all transportation modes in San Francisco. Once completed, Van Ness BRT will be an integral part of the Muni "Rapid" network of transit service proposed in 2008, which will gradually be implemented on all major corridors in San Francisco.

In June 2008, the Authority entered into an agreement with the City (the Original Agreement) to set out respective roles and responsibilities for environmental review of the Project.

The Final Environmental Impact Report/Environmental Impact Study (EIR/EIS) was approved in September 2013. The Parties have subsequently agreed that SFMTA shall take the lead for further developing and implementing the Project, including completing the 30% engineering design documents that the Original Agreement designated as a task to be completed by the Authority.

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The purpose of this Agreement is to outline roles and responsibilities of the Authority, and the SFMTA with respect to continuation of the design of the Project.

Phase 1 of the Project consists of Phase 1A and Phase 1B. Phase 1A, which has been completed, included environmental review of the Project and preparation of conceptual engineering and design documents that were approximately 12 percent complete. Under environmental review, the Authority took the lead in the preparation of both an Environmental Impact Statement (EIS), in accordance with the provisions of federal law (NEPA), and an EIR, in accordance with the provisions of California law (CEQA). The Final EIR/EIS was certified in September 2013 by the Authority. In addition, the SFMTA Board approved the Project and made required CEQA findings at its meeting of September 17, 2013. In recognition of the approval of the EIR/EIS, the FTA issued a Record of Decision (ROD) on December 20, 2013. The ROD authorizes the SFMTA, among other things, to acquire vehicles for the Project and maintain eligibility for reimbursement of such expenses from federal grants.

Phase 1B of the Project will include completion of preliminary engineering and design documents for the Project to a level of approximately 30 percent, culminating in a Conceptual Engineering Report (CER). The full scope of work is contained in Appendix A of the Agreement.

Under the Agreement, the SFMTA will reimburse the Authority for staff time used to monitor and/or enforce the Environmental Impact Statement/Environmental Impact Report, in an amount not to exceed \$100,000. SFMTA will also reimburse the Authority up to \$434,531 in FTA grant funds for allowable Phase 1A work by the Authority and its consultant firm, Kimley-Horn. Prior to reimbursing the Authority for any expenses incurred by Kimley-Horn, Authority must obtain approval from the FTA that its process for procuring the consultant, and its administration of the contract, complied sufficiently with FTA requirements. Finally, the Agreement requires the Authority to reimburse the SFMTA up to \$349,362 in Proposition K funds for work done by SFMTA under Phase 1A.

This Agreement will terminate upon the later of the date of completion of the CER or June 30, 2014.

ALTERNATIVES CONSIDERED

The Original Agreement envisioned that the EIS/EIR would be completed entirely with local matching funds (Prop. K funds) for the larger Van Ness BRT Project. However additional funding was required to complete the work.

As a result it was determined that it would be best to transfer FTA funds from the SFMTA, the grant recipient, to the Authority, as a subrecipient of a portion of the FTA Grant funds, for the excess costs the Authority incurred in connection with conducting environmental review of the Project.

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In addition, it was determined that it would be beneficial for the SFMTA to take the lead of the design effort at the completion of the environmental effort rather than at the completion of the 30 percent design.

FUNDING IMPACT

The estimated cost of the Core BRT project (bus lanes/stations and platforms/landscaping), as of the completion of the EIS/EIR, is approximately \$125,000,000. However, draft engineering documents currently under review indicate that project cost could be significantly greater. Funding for the project will come from the following sources:

- \$75,000,000 – Federal Transit Administration “Small Starts” program funds
- \$26,000,000 – San Francisco – Prop K sales tax
- \$24,000,000 – Other local, regional and State funding sources

Additional funding to close the gap will need to be identified once the cost estimate has been refined and possibly lowered through value engineering, and scope adjustments to the extent possible.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No additional approvals are needed.

RECOMMENDATION

The staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute the Amended and Restated Agreement #A06/07-34 for the Van Ness Bus Rapid Transit Project between the San Francisco County Transportation Authority and the City and County of San Francisco, through its Municipal Transportation Agency and its Planning Department, in an amount not to exceed \$534,531.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco County Transportation Authority (the Authority) have been partnering in the development of Bus Rapid Transit (BRT) for Van Ness Avenue (the Project); and,

WHEREAS, The goals of BRT are robust and stable ridership, efficient, effective and equitable transit service, neighborhood livability and community vitality, and links to a citywide rapid transit network; and,

WHEREAS, In June 2008, the Authority entered into an agreement with the City, through the SFMTA and the Planning Department (the Original Agreement) to set out respective roles and responsibilities for environmental review of the Van Ness BRT Project (the Project); and

WHEREAS, The Final EIR/EIS for the Project was certified in September 2013 by the Authority; in addition, the SFMTA Board approved the Project and made required CEQA findings at its meeting of September 17, 2013; and

WHEREAS, Phase 1A of the Project, which has been completed, included environmental review of the Project and preparation of conceptual engineering and design documents that are approximately 12 percent complete; Phase 1B will include completion of preliminary engineering and design documents for the Project to a level of approximately 30 percent, culminating in a Conceptual Engineering Report (CER); and

WHEREAS, The SFMTA and the Authority have agreed that the SFMTA shall assume the lead role for the Project beginning with Phase 1B, and shall complete the preliminary engineering design documents for the Project as well as the CER; and,

WHEREAS, As the grantee of the Federal Small Start funds for the Project under Grant No. CA-03-0811-01 (FTA Grant), SFMTA is responsible for the expenditure of such funds as of February 8, 2011; and,

WHEREAS, The parties desire to amend and restate the Original Agreement to set forth (1) the change in roles and responsibilities referenced above; (2) the terms and conditions upon which up to \$434,531 of FTA Grant funds shall be allocated by SFMTA to the Authority, as a subrecipient of a portion of the FTA Grant funds, for the eligible costs Authority has incurred in connection with conducting environmental review of the Project; (3) provide for SFMTA's reimbursement to the Authority for up to \$100,000 of additional costs that may be incurred by Authority in supporting SFMTA's efforts during Phase 1B of the Project, as defined in this Agreement; and (4) provide for the Authority to reimburse the SFMTA up to \$349,362 in Proposition K funds for work performed by SFMTA under Phase 1A of the Project; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute the Amended and Restated Agreement #A06/07-34 for the Van Ness Bus Rapid Transit Project between the San Francisco County Transportation Authority and the City and County of San Francisco, through its Municipal Transportation Agency and its Planning Department, in an amount not to exceed \$534,531.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of February 18, 2014.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



amended and restated AGREEMENT # A06/07-34

**for
Van Ness Bus Rapid Transit**

THIS AMENDED AND RESTATED AGREEMENT (Agreement) is made on the _____ day of _____, 2014, by and between the San Francisco County Transportation Authority (the Authority), and the City and County of San Francisco (City), through its Municipal Transportation Agency (SFMTA) and the Major Environmental Analysis division of the San Francisco Planning Department (MEA), referred to collectively as Parties. This Agreement amends and restates that certain Agreement #A06/07-34, originally effective as of June 13, 2008, between the Authority and the City, through SFMTA and MEA (the Original Agreement), with respect to the following facts:

RECITALS

- A. The SFMTA and the Authority have been working together to develop and implement Bus Rapid Transit facilities and services on Van Ness Avenue (the Project) and will work on the Project as set forth in this Agreement.
- B. The SFMTA is the City agency responsible, under the San Francisco Charter, for developing and providing public transportation facilities and services and traffic management facilities and services within the City.
- C. The Authority, as the local congestion management agency, is responsible under state law for developing the Countywide Transportation Plan and is responsible for submitting that plan to the Metropolitan Transportation Commission for inclusion in the regional transportation plan, and such inclusion is a prerequisite to receipt of state and federal project funding.
- D. The Authority, as the county transportation authority, is responsible for allocating funds from the sales tax approved by the San Francisco voters at the municipal election on November 3, 2003 (Proposition K), and for developing the Expenditure Plan -- also approved by the San Francisco voters on November 3, 2003 -- that prescribes the permissible uses for such funds.
- E. MEA is designated as lead agency for purposes of implementing the City's responsibilities under the California Environmental Quality Act, Public Resources Code Sections 21000 et seq. (CEQA).
- F. The Authority is a separate legal entity from the City responsible for implementing its responsibilities under CEQA.
- G. The Proposition K Expenditure Plan and the Countywide Transportation Plan support and provide funding for the Project.

- H. The Authority, in cooperation with the SFMTA, conducted a Van Ness Avenue BRT Feasibility Study that found BRT on Van Ness Avenue to be feasible and desirable.
- I. The Municipal Transportation Agency Board endorsed the Van Ness Avenue BRT Feasibility Study on December 5, 2006.
- J. The Authority Board approved the Van Ness Avenue BRT Feasibility Study on December 12, 2006.
- K. The Project requires environmental review under CEQA and the National Environmental Policy Act (NEPA).
- L. The City and the Authority could both act as lead agency under CEQA to prepare an environmental impact report for the Project, and determined that the Authority should act as lead agency under CEQA and retain responsibility for completion of environmental review and monitoring of environmental compliance throughout the Project, and Authority has been acting in the capacity of lead agency in connection with the Project. SFMTA is a responsible agency as part of the environmental documentation process.
- M. In its capacity as the lead agency, the Authority will ensure that a legally adequate Environmental Impact Report (EIR) is prepared, and SFMTA and MEA will provide information necessary for the EIR and review any documents or analyses as appropriate.
- N. The Project has been designated and approved by the Federal Transit Administration (FTA) as a "Small Starts" project authorized by Section 5309(e) of Title 49 of the United States Code that is eligible for federal funding, subject to a local matching funds requirement. The Project's local match requirement for the FTA Grant will be satisfied through an allocation of Proposition K funds, and other sources of state and local funds that the Parties may obtain and allocate to the Project, including, but not limited to, provision of in-kind services for the Project.
- O. Because federal funds will be used for the Project, the Project requires environmental review and preparation of an Environmental Impact Statement (EIS) under NEPA, which will be prepared by the Authority in conjunction with the EIR.
- P. The Authority conducted an alternatives analysis and its Board of Commissioners adopted the "Center-Running Bus Rapid Transit with Right Side Boarding Platforms, Single Median and Limited Left Turns" as the Locally Approved Alternative (LPA) for the Project on June 26, 2012; The Board of Directors of the SFMTA adopted Resolution No. 12-070 selecting the same LPA on May 15, 2012.
- Q. The current aggregate budget for Project environmental and preliminary engineering work is \$15.1 million, anticipated to be paid through a combination of local, state and federal funds as shown in the budget as part of the Allocation Request Form (ARFs), set forth in the attached Appendices B and C.

- R. The City and the Authority entered into the Original Agreement to set forth their original allocation of respective responsibilities for developing and implementing the Project. The Parties have subsequently agreed that the SFMTA shall complete the 30% Engineering Task that the Original Agreement designated as a task to be completed by the Authority.
- S. The Project as described in the Original Agreement consisted of two distinct phases. Consistent with the Transition Plan that the parties have provided to the FTA, a copy of which is attached to this Agreement as Appendix E, and which is incorporated by reference herein. The Parties wish to memorialize changes to the original Project plan that was set forth in the Original Agreement to a revised Project plan consisting of two phases, with the first phase being comprised of two sub-phases: Phase 1A will consist of activities prior to the FTA's issuance of its Record of Decision (ROD) for the Project, and Phase 1B will commence upon issuance of the ROD. The Parties also wish to describe their respective roles and responsibilities in connection with the revised Project plan as set forth in this Agreement.
- T. Lead responsibility for the Project will transition from the Authority to SFMTA upon issuance of the ROD. SFMTA will lead the design effort upon Caltrans approval of the Project Design Exceptions.
- U. As the grantee of the Federal Small Start Funds for the Project pursuant to Grant No. CA-03-0811-01 (the "FTA Grant"), SFMTA is responsible for the expenditure of such funds beginning February 8, 2011, and the parties desire to amend and restate the Original Agreement to set forth the terms and conditions upon which up to \$434,531 of such FTA Grant funds shall be allocated by SFMTA to reimburse the Authority, as a sub-recipient of a portion of the FTA Grant funds, for the eligible costs Authority incurs in connection with conducting environmental review of the Project. The parties also desire to amend and restate the Original Agreement to provide for SFMTA's reimbursement to the Authority for up to \$100,000 of additional costs to be incurred by Authority in supporting SFMTA's efforts during Phase 1B of the Project, as defined in this Agreement. As of the Effective Date of this Agreement, the Original Agreement shall no longer have any force and effect.

AGREEMENT

- 1. **Agreement Purpose and Phases.** The purpose of this Agreement is to outline roles and responsibilities of the Authority, the SFMTA and MEA with respect to the Project. The Project shall consist of two phases.
 - a. **Phase 1 of the Project:** Phase 1 consists of Phase 1A and Phase 1B. The allocation and sequencing of these efforts during Phase 1A and Phase 1B are as follows:
 - i. **Phase 1A**
 - (A) FTA Requirements: Submission of a request to enter Project development, and a supporting Alternatives Analysis, consistent with the requirements of 49 U.S.C. § 5309 and all FTA guidance, which identifies an LPA;

- (B) Environmental Analysis: Preparation of an environmental document that analyzes the Project and meets the requirements for both an EIS in accordance with the provisions of NEPA and an EIR in accordance with the provisions of CEQA, culminating with the issuance of a ROD;
 - (C) Conceptual Engineering: Commencement of preliminary engineering, to include preparation of conceptual engineering and design documents for the LPA and EIS/EIR that are approximately 12% complete.
- ii. **Phase 1B.** Phase 1B of the Project shall include completion of preliminary engineering and design documents for the Project, with design documents at approximately 30% complete, culminating in a Conceptual Engineering Report (CER). The full scope of this effort is identified in Appendix A.
- b. **Phase 2 (Future Stages) of the Project.** Future stages of the Project shall include further planning, final design, engineering, and construction of the Project, obtaining all subsequent approvals from FTA, including a Small Starts Grant Agreement with FTA, procurement of any required revenue vehicles, and delivery of service. This Agreement is intended only to address the Parties' specific roles and responsibilities in connection with Phase 1. The Parties anticipate that future stages shall proceed in accordance with the Parties' respective usual project development, implementation and funding roles, with the exception of the Authority's continuing responsibility for environmental compliance monitoring as the lead agency. The Authority's costs to perform ongoing environmental compliance monitoring as lead agency after completion of Phase 1B will be subject to reimbursement from Project funds, as described in Section 4.d.ix. of this Agreement.
- 2. **Term; Effective Date.** This Agreement shall be effective as of February 8, 2011 (Effective Date) and end on the later of the date of completion of the Conceptual Engineering Report or June 30, 2014.
 - 3. **Scope, Schedule and Budget.** The Phase 1A Scope of Work shall be as set forth in Appendices A-1 and A-2. The Phase 1A schedule and budget, as well as the Phase 1B Scope of Work, shall be as set forth in Appendices B and C as part of the Allocation Request Forms approved by the Authority Board on May 21, 2013. Requests for reimbursement of expenditures by either the Authority or SFMTA shall be made and submitted substantially in accordance with the reimbursing agency's procedures and respective approved forms of request for reimbursement, attached to this Agreement as Appendix D.
 - 4. **Roles and Responsibilities:**
 - a. **Authority – Phase 1A:**
 - i. The Authority will serve as the lead agency for the Project within the meaning of CEQA and provide overall project management for Phase 1A of the Project. In cooperation with the SFMTA, the Authority will coordinate with key agency partners; procure and manage technical consultants; staff a Project Technical Advisory Committee (TAC) and a Project Citizens Advisory Committee (CAC); and lead technical efforts in demand modeling.

- ii. The Authority will be responsible for completion of Phase 1A as described above, in cooperation with SFMTA, including certification of the EIS/EIR, selection of an LPA and obtaining a ROD from the FTA.
- iii. The SFMTA and the Authority will work together to continue development of the Project funding plan, and obtain funding for Phase 2 from federal, state, regional and local sources.
- iv. With input from the SFMTA, the Authority will lead coordination with Caltrans on project development issues through Phase 1A.
- v. With input from the SFMTA, the Authority will convene a TAC, comprised of representatives from the San Francisco Department of Public Works (DPW), the San Francisco Public Utilities Commission (PUC), the Planning Department, Golden Gate Transit, and other relevant agencies.
- vi. Alternatives Analysis: As required under the Original Agreement, Authority has completed an alternatives analysis and obtained approval of the LPA as described in Recital P of this Agreement and shall carry out its responsibilities hereunder consistent with such LPA.
- vii. Environmental Review: As required under the Original Agreement, Authority staff obtained agreement from SFMTA staff on the Description of Alternatives before the Authority Board adopted the Description of Alternatives, and before the Description of Alternatives was submitted to the FTA.
- viii. Environmental Review: As required under the Original Agreement, with input from the SFMTA, the Authority conducted public involvement throughout the analysis, including public workshops, public hearings, stakeholder and agency meetings, as well as a media campaign to support the overall public outreach efforts in accordance with the Procedures for Implementing the California Environmental Quality Act adopted by the Authority Board on July 24, 2007, and the Authority shall continue to carry out its responsibilities hereunder consistent with such procedures..
- ix. Conceptual engineering: The Authority will prepare the final conceptual engineering drawings (12% design) for the environmental phase, which will serve as the basis for the environmental documents.
- x. Environmental Review: The Authority shall seek City input on the draft EIS/EIR before certifying the EIS/EIR or submitting a final version to the FTA. The City will serve as a responsible agency within the meaning of Section 21069 of the California Public Resources Code and the CEQA Guidelines §§15096 and 15381, and a participating agency within the meaning of NEPA, 40 Code of Federal Regulations § 1508.5. The Authority will certify the EIS/EIR at a public hearing of the Authority Board.

- x. The Authority shall prepare the Project Study Report-Project Report (PSR-PR) and Fact Sheets for Exceptions to Mandatory Design Standards for Caltrans approval.
- xii. The Authority has established a secure project website with shared calendar, email list, and document repository, accessible to all individuals involved in the project development. The Authority will continue to host this website until issuance of the ROD.
- xiii. The Authority will evaluate and approve SFMTA Proposition K funding requests developed as consistent with the 2009 Five-Year Prioritization Programs (5YPP). This amount includes reimbursing the SFMTA, through Authority appropriations, in an amount not to exceed \$349,362 for allowable staff costs incurred during Phase 1A (which excludes \$99,000 of funding already paid to SFMTA through a Prop K allocation, Resolution 11-33).

b. Authority -- Phase 1B:

- i. Preliminary Engineering. Upon certification of the EIS/EIR, Authority staff shall meet and confer with SFMTA staff on the scope, budget, and schedule of the Phase 1B effort. SFMTA shall provide Authority staff with a copy of all documents prepared as part of such work effort. Authority shall have an opportunity to review and comment on all design and CER documents prior to SFMTA's submittal of such documents to FTA.
- ii. The Authority will assume its traditional project management oversight role as a funding agency for the Project. Authority staff will evaluate SFMTA Proposition K funding requests, and upon the Authority's determination that a request is reasonable and consistent with the 2009 5YPP and the approved Project Budget set forth in Appendices B and C, the Authority shall recommend that its Board approve such request.
- iii. The Authority will monitor compliance with the EIS/EIR. Any disagreements with the SFMTA regarding environmental compliance shall be subject to the following dispute resolution process: (1) disputes unable to be resolved by staff of the agencies will be elevated to the Director of Capital Projects and Construction for the SFMTA, and to the Deputy Director of Capital Projects for the Authority, who shall meet and confer to consider the dispute within 15 days of either party's request for such meeting; (2) any disputes still unable to be resolved after step (1) has been completed will be resolved by the Director of Transportation for the SFMTA, and the Executive Director for the Authority.
- iv. The Authority will participate in the TAC.

- v. The Authority will assist the SFMTA in its efforts to complete the CER through efforts and budget defined in Appendix C. The SFMTA shall reimburse the Authority's costs for these efforts as provided in Section 4.d.ix of this Agreement.

c. **SFMTA – Phase 1A:**

- i. The SFMTA tasks for Phase 1A are generally as set forth below and are described in more detail in Appendix A-1 and A-2. A portion of the tasks for Phase 1 is also described in Appendix B, as is the budget for Phase 1A.
- ii. The SFMTA will provide assistance to the Authority in the development of all aspects of Phase 1A, including the development of transit service and operations plans, traffic impact analysis, identification of mitigation measures, and technical review of the preliminary engineering. The SFMTA will participate in the TAC.
- iii. The City, through SFMTA and MEA, will provide input to the Authority as a responsible agency within the meaning of Section 21069 of the California Public Resources Code and the CEQA Guidelines §§ 15096 and 15381 and a participating agency within the meaning of NEPA, 40 Code of Federal Regulations 1508.5.
- iv. As required under the Original Agreement, and as described in Recital P, the SFMTA Board has selected the LPA, and SFMTA shall continue to carry out its responsibilities under this Agreement consistent with the LPA.
- v. Upon certification of the EIS/EIR by Authority, the SFMTA staff will submit the EIS/EIR to its Board, and the Board will consider endorsement of the EIS/EIR. At such time as SFMTA's Board of Directors approves the Project, it is also responsible for adopting CEQA findings, including agreeing to implement mitigation measures within its jurisdiction and adopting a statement of overriding considerations, if applicable.

d. **SFMTA – Phase 1B:**

- i. The SFMTA tasks for Phase 1B are generally as set forth below and are described in more detail in Appendix C. The budget for Phase 1B is also set forth in Appendix C. A portion of SFMTA tasks for Phase 1B covering the period between March 25, 2012 and May 31, 2013, as well as the budget for those tasks, is covered in Appendix B.
- ii. The SFMTA will take the lead and work with the Authority in the continued development of the Project funding plan, and shall coordinate its efforts with the Authority to obtain funding for the remaining phases of the Project from federal, state, regional and local sources.
- iii. The SFMTA will manage Phase 1B of the Project, and will accordingly complete preliminary engineering (30% design) of the Project, including traffic engineering, acquisition of any required transit vehicles and land for facilities/sites. Final facility design and construction, implementation of mitigation measures as identified in the

Mitigation and Monitoring Reporting Program, and delivery of transit services will be part of Phase 2 of the Project.

- iv. The SFMTA will maintain the project schedule and budget control system to monitor and report Project progress and manage the project delivery costs. The SFMTA will maintain a document control system and provide open access to the Project files to FTA, the Authority and other funding partners throughout the Project's design and delivery phases. Phase 1B funding requests from SFMTA to the Authority shall be in accordance with the Authority's ARF process.
 - v. During the course of the conceptual engineering phase, the SFMTA will provide quarterly updates to the FTA, to the Authority, and at the request of the Authority, to the full Transportation Authority Board. The reporting periods will end December 31, March 31, June 30 and September 30. Narrative progress reports will contain the following information: a description of the work completed during the period; tasks expected to be performed during the next period; major project milestones, changes to milestones, and reasons for the changes; and explanations of problems or delays encountered or anticipated. Financial reports will include a balance sheet, budget to actual costs comparison, and a project expenditure statement by line item code.
 - vi. The SFMTA will lead public outreach efforts and continue coordination activities by engaging appropriate community groups, merchant groups, commissions and residents. The SFMTA will seek input from the various groups and keep them informed about progress as the project advances from the environmental phase to design and construction.
 - vii. The SFMTA will establish and support a follow-on project Citizens Advisory Committee (CAC) and TAC. The SFMTA will consult with its CAC and TAC and continue to provide regular project status updates at the request of the Authority's Plans and Programs Committee.
 - viii. The SFMTA will continue planning for the procurement of new low-floor buses through its bus fleet replacement program to operate on the motor coach and trolley bus lines along Van Ness Avenue, branded to distinguish them from other local services.
 - ix. The SFMTA shall reimburse the Authority for allowable Project Costs incurred by the Authority for its Phase 1B work as described in Section 4.b., above, in an amount not to exceed \$100,000, as indicated in the budget set forth in Appendix C.
5. **Reimbursement of Authority Costs from FTA Grant.** SFMTA shall allocate \$434,531 of the FTA Grant to reimburse the Authority for costs incurred by Authority in connection with the Project, subject to the following conditions:
- a. **Subgrantee.** The Authority will be a subgrantee with respect to the FTA Grant funds, responsible for compliance with all applicable provisions of the most recent FTA Master Agreement (currently, FTA MA 19, dated October 1, 2012), Certifications and Assurances for FTA Assistance Programs, the grant application, FTA Circular 4220.1F,

as amended, and all applicable laws and regulations, using sound management practices. Every provision of FTA MA(19) and the Certifications and Assurances, as they may be amended from year to year, are incorporated by reference and will govern the Authority expenditure of all FTA Grant funds, as well as expenditure of local matching funds required to fulfill the obligations of the Project grants.

- b. **Disbursement of Grant Funds.** Authority shall document Project costs in the manner required by the FTA and SFMTA, and shall submit its requests for reimbursement of allowable costs incurred by it to the SFMTA in the form of the sample Request for Reimbursement set forth in Appendix D. For work completed prior to and including June 30, 2013, the Authority shall provide a single invoice. The Authority shall also provide a single invoice for work beginning July 1, 2013 and completed through the issuance of the ROD. Upon approval of the City's Controller, SFMTA shall disburse FTA Grant funds to the Authority in accordance with the Authority's instruction for delivery of such funds.
- c. **Allowable Costs; Disallowance.**
 - i. The City shall reimburse the Authority for its allowable costs and expenses incurred to perform its obligations in connection with completion of Phases 1A and 1B of the Project as specified in this Agreement (see Sections 4.d.ix and 5), in accordance with and subject to the approved Project Budget. If the Authority claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, the Authority, as required, 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 Authority under this Agreement. Notwithstanding the above, prior to reimbursing the Authority for any expenses incurred by its consultant, Kimley-Horn, Authority shall obtain approval from the FTA that its process for procuring said consultant and its administration of such contract, complied sufficiently with FTA requirements.
 - ii. The Authority shall reimburse the SFMTA for its allowable costs and expenses incurred to perform its obligations in connection with completion of Phase 1A of the Project as specified in this Agreement (see Section 4.a.xiii), in accordance with and subject to the approved Project Budget. If the SFMTA claims or receives payment from Authority for a service, reimbursement for which is later disallowed by the Authority as not part of the Project Budget, the SFMTA, as required, shall promptly refund the disallowed amount to Authority upon Authority's request. At its option, Authority may offset the amount disallowed from any payment due or to become due to SFMTA under this Agreement.
- d. **Reports.** Commencing with the execution of this Agreement, the Authority will provide SFMTA with quarterly progress reports regarding expenditure of the Funds no later than 60 calendar days after each reporting period. For work completed prior to and including June 30, 2013, the Authority shall provide a single report. The reporting periods will end December 31, March 31, June 30 and September 30. Narrative progress reports will contain the following information: a description of the work completed during the

period; tasks expected to be performed during the next period; major project milestones, changes to milestones, and reasons for the changes; and explanations of problems or delays encountered or anticipated. Financial reports will include a balance sheet, budget to actual costs comparison, and a project expenditure statement by line item code. Allowable costs incurred by the Authority shall be documented beginning February 8, 2011, as detailed in Appendix B.

- e. **Use of Funds.** The Authority shall only use federal funds for costs incurred beginning February 8, 2011, including staff costs, and for third party contracts that have been procured subsequent to that date according to FTA requirements. All contracts procured by the Authority to perform Project work shall be procured in accordance with applicable FTA requirements, and Authority shall include applicable FTA requirements in all contracts that the Authority procures for the Project.

6. **Reimbursement of SFMTA Costs from Authority.**

- a. **Reports.** SFMTA will provide the Authority with monthly progress reports regarding expenditure of the Funds. Narrative progress reports will contain the following information: a description of the work completed during the period; tasks expected to be performed during the next period; major project milestones, changes to milestones, and reasons for the changes; and explanations of problems or delays encountered or anticipated. Financial reports will include a balance sheet, budget to actual costs comparison, and a project expenditure statement by line item code.
- b. **Use of Funds.** SFMTA shall only use Prop. K Funds for costs incurred beginning January 7, 2011, including staff costs, and for work order contracts with DPW, in accordance with the Scope of Work in Appendix A-2.

7. **Risk of Non-Appropriation of Grant Funds.** This Agreement is subject to the budget and fiscal provisions of the federal government, and the City Charter. City will have no obligation to make appropriations for this Agreement should the federal government fail to appropriate the FTA Grant funds. The Authority also acknowledges that City budget decisions are subject to the discretion of its Mayor and Board of Supervisors. The Authority assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement. Notwithstanding the foregoing, the City commits to use all resources available to it under applicable Law to budget all payments due Authority hereunder, and to use best efforts to obtain availability and certification of all payments due Authority.

8. **Certification of Controller; Guaranteed Maximum Costs.** No funds will be available under this Agreement until prior written authorization certified by the Controller. In addition, as set forth in Section 21.10-1 of the San Francisco Administrative Code:
- a. City's obligations hereunder will not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. However, as provided in Section 5, above, SFMTA shall include the funding for reimbursement of the Authority's costs as provided in this Agreement in SFMTA's annual budget, and shall exercise best efforts to obtain such appropriation and certification of funding.

- b. Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request the Authority to perform services or to provide materials, equipment and supplies that would result in the Authority performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to pay the Authority for services, materials, equipment or supplies that are provided by the Authority which are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by City and the Authority.
- c. City and its employees and officers are not authorized to offer or promise to the Authority additional funding for this Agreement which would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein will require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.
- d. The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.
- e. This Agreement will automatically terminate, without penalty, liability or expense of any kind to City, at the end of any federal fiscal year if funds are not appropriated for the next succeeding federal fiscal year. If funds are appropriated for a portion of any federal fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind to City, at the end of such portion of the federal fiscal year. Notwithstanding any such termination, the each Party shall remain responsible to reimburse the other Party for any allowable costs incurred by the respective Party prior to termination as otherwise provided in this Agreement.

9. Indemnification:

- a. City shall indemnify, defend, and hold harmless the Authority, its officers agents and employees from and against all claim, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of City, its officers, employees or agents in connection with this Agreement.
- b. The Authority shall indemnify, defend, and hold harmless the City, its officers, agents and employees from and against all claim, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of the Authority, its officers, employees or agents in connection with this Agreement.

10. Authority Events Of Default

- a. **General.** The occurrence of any one or more of the following events will constitute an "Event of Default" under this Agreement:
- i **Material Breach of Section 4 of Agreement.** The Authority shall take any action, or fail to take any action, that results in a material breach of the Authority's obligations under Section 4 of this Agreement, and such failure is not caused in whole or in part by any action or omission of City, and such default continues for a period of 30 days after written notice thereof from City to Authority.
 - ii **False Statement.** Any statement, representation or warranty contained in this Agreement, or in any other document submitted to City under this Agreement by the Authority that is materially false or misleading.
 - iii **Failure to Comply with Applicable Laws.** The Authority fails to comply with any federal, state or local law or regulation applicable to this Agreement.
 - iv **Voluntary Insolvency.** The Authority, as applicable, (a) is generally not paying its debts as they become due, (b) 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, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of the Authority, as applicable, or of any substantial part of the Authority's property or (e) takes action for the purpose of any of the foregoing.
 - v **Involuntary Insolvency.** Without consent by the Authority, as applicable, a court or government authority enters an order, and such order is not vacated within 10 days, (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to the Authority, as applicable, or with respect to any substantial part of the Authority's property, (b) 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 (c) ordering the dissolution, winding-up or liquidation of the Authority.
- b. **Remedies Upon Event of Default.** Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:
- i **Withholding of Funds.** With respect to an Event of Default described in paragraphs a(i) or a(ii), above, City may withhold funds not yet disbursed regardless of whether the Authority has previously submitted a request for such funds or whether City has approved the disbursement of the Funds under a prior request for such funds. Any Funds withheld pursuant to this Section and subsequently

disbursed to the Authority after cure of applicable Events of Default will be disbursed without interest.

- ii **Return of Funds.** City may demand the immediate return of any previously disbursed Funds that have been claimed or expended by the Authority in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.
- iii **Remedies Nonexclusive.** Each of the 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 remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy will not preclude or in any way be deemed to waive any other remedy.

11. City Events of Default:

- a. Each of the following shall constitute an “Event of Default” by City under this Agreement:
 - i. **Material Breach of Section 4 of Agreement.** The City shall take any action, or fail to take any action, that results in a material breach of its obligations under Section 4 of this Agreement, and such failure is not caused in whole or in part by any action or omission of Authority, and such default continues for a period of 30 days after written notice thereof from Authority to SFMTA.
 - ii. **Failure to Comply with Applicable Laws.** City fails to comply with any federal, state or local law or regulation applicable to this Agreement.
 - iii. **False Statement.** Any statement, representation or warranty contained in this Agreement, or in any other document submitted to Authority under this Agreement by SFMTA in requesting reimbursement of costs from Authority is materially false or misleading.
 - iv. **Remedies.** In the event of a City default, Authority shall have the right to exercise its legal and equitable remedies, including the right to specific performance. Under no circumstances shall City's liability to Authority for a default specified in clause (i) of this Section 9.a exceed the amount specified in Section 4, less amounts previously paid to Authority. With respect to an Event of Default described in paragraphs a(ii) or a(iii), above, Authority may withhold funds not yet disbursed regardless of whether the SFMTA has previously submitted a request for such funds or whether Authority has approved the disbursement of the Funds under a prior request for such funds. Any Funds withheld pursuant to this Section and subsequently disbursed to the SFMTA after cure of applicable Events of Default will be disbursed without interest.
 - v. **Return of Funds.** Authority may demand the immediate return of any funds previously disbursed to SFMTA pursuant to Section 4.a.xiii of this Agreement that have been claimed or expended by the SFMTA in breach of the terms of this

Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

vi. Material Breach of City's Obligations Under Section 4.d.i and 4.d.iii.

Notwithstanding the above, Authority's remedies for the City's breach of its obligations under Section 4.d.i and 4.d.iii (Phase 1B design work) shall be as provided in the Standard Grant Agreement for Project No. 101.910045.

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

To Authority: Cynthia Fong, Deputy Director for Finance and Administration
San Francisco County Transportation Authority
1455 Market Street, 22nd Floor
San Francisco, CA 94103
email: cynthia.fong@sfcta.org
fax: (415) 522-4829

To SFMTA: Vincent Harris, Director of Capital Programs and Construction
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, Suite 7056
San Francisco, CA 94103-5417
email: vincent.harris@sfgov.org
fax: (415) 701-4735

To MEA: Sarah B. Jones, Environmental Review Officer
San Francisco Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103
email: sarah.b.jones@sfgov.org

13. Termination for Convenience. Each Party shall have the option, in its sole discretion, to terminate this Agreement, at any time during its term, for convenience and without cause. The Party terminating the Agreement shall exercise this option by giving the other Party at least 90 days' written notice of termination. The notice shall specify the date on which termination shall become effective. In the event of such termination, the Party terminating the Agreement shall remain responsible to reimburse the other Party for any allowable costs incurred by the other Party prior to termination as otherwise provided in this Agreement.

14. General Provisions

a. **Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

b. **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.

- c. **Audit and Inspection of Records.** The Parties agree to maintain and make available to the each other, during regular business hours, accurate books and accounting records relating to their work under this Agreement and the work of any third parties performing work on the Project. The Parties will permit each other 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. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than three years after completion of the Project 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 conferred upon the Parties by this Section.
- d. **No Assignment.** Neither Party shall, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of such Party hereunder without the prior written consent of the other Party. This Agreement will not, nor will any interest herein, be assignable as to the interest of a Party involuntarily or by operation of law without the prior written consent of the other Party. A change of ownership or control of a Party or a sale or transfer of substantially all of the assets of a Party will be deemed an assignment for purposes of this Agreement. Any agreement made in violation of this Section will confer no rights on any person or entity and will automatically be null and void.
- e. **Sunshine Ordinance.** The Authority acknowledges and agrees that this Agreement is subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals and all other records of communications between City and persons or entities seeking contracts, will be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by the Authority that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.
- f. **Submitting False Claims; Monetary Penalties.**
 - (1) The Authority acknowledges and agrees that it is subject to San Francisco Administrative Code Section 21.35. Under such Section 21.35, any contractor, subgrantee or consultant who submits a false claim will be liable to City for three times the amount of damages which City sustains because of the false claim. A contractor, subgrantee or consultant who submits a false claim will also be liable to City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A contractor, subgrantee or consultant will be deemed to have submitted a false claim to City if the contractor, subgrantee or consultant: (a) knowingly presents or causes to be presented to an officer or employee

of 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 City; (c) conspires to defraud City by getting a false claim allowed or paid by 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 City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

- (2) Pursuant to California Government Code Section 12651, any person who commits any of the following acts will be liable to the Authority for three times the amount of damages which the Authority sustains because of the act of that person. A person who commits any of the following acts will also be liable to the Authority for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the Authority for a civil penalty of up to \$10,000 for each false claim. A person will be deemed to have submitted a false claim to the Authority if the person: “(1) Knowingly presents or causes to be presented to an officer or employee of [the Authority] a false claim or request for payment or approval. (2) 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 Authority]. (3) Conspires to defraud [the Authority] by getting a false claim allowed or paid by [the Authority]. (4) Has possession, custody, or control of public property or money used or to be used by [the Authority] and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt. (5) Is authorized to make or deliver a document certifying receipt of property used or to be used by [the Authority] and knowingly makes or delivers a receipt that falsely represents the property used or to be used. (6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property. (7) 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 Authority]. (8) Is a beneficiary of an inadvertent submission of a false claim to [the Authority], subsequently discovers the falsity of the claim, and fails to disclose the false claim to [the Authority] within a reasonable time after discovery of the false claim.” Reference to Government Code Section 12651(6) has been deleted because the Parties agree that Section 12651(6) does not apply to this Agreement.

- g. **Drug-Free Workplace Policy.** The Parties acknowledge that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. The Parties and their officers, employees, agents or assigns will comply with all terms and provisions of such Act and the rules and regulations promulgated under such Act.
- h. **Compliance with ADA.** The Parties acknowledge that, pursuant to the Americans With Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. The Parties will not discriminate against any person protected under the ADA in connection with all or any portion of the Project and will comply at all times with the applicable provisions of the ADA.
- i. **No Waiver.** No waiver by any Party of any default or breach of this Agreement will be

implied from any failure by the non-defaulting Party to take action on account of such default if such default persists or is repeated. No express waiver by a Party will affect any default other than the default specified in the waiver and will be operative only for the time and to the extent therein stated. Waivers by a Party of any covenant, term or condition contained herein will not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by a Party of any action requiring further consent or approval will not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

- j. **Headings.** All article and section headings and captions contained in this Agreement are for reference only and will not be considered in construing this Agreement.
- k. **Relationship of the Parties.** The Authority will at all times remain solely liable for the acts and omissions of the Authority, its officers and directors, employees and agents, and SFMTA will at all times remain solely liable for the acts and omissions of SFMTA. Nothing in this Agreement will be construed as creating a partnership, joint venture, employment or agency relationship between SFMTA and the Authority.
- l. **Conflict of Interest.** Through its execution of this Agreement, the Parties acknowledge that they are familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certify that they do not know of any facts which constitute a violation of said provisions and agrees that they will immediately notify the other Party if it becomes aware of any such fact during the term of this Agreement.
- m. **Entire Agreement.** This Agreement sets forth the entire Agreement between the Parties, restates the Original Agreement in its entirety, and supersedes all other oral or written provisions.
- n. **Successors; No Third-Party Beneficiaries.** The terms of this Agreement will be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, will be construed to give any person or entity (other than the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.
- o. **Survival of Terms.** The following provisions of this Agreement will survive and continue following expiration or termination of this Agreement: Sections 5.a, 5.c, 5.d; 6.a, 9; 12, 14.b, 14.c, 14.i, 14.k, 14.m, 14.n, 14.o, and 14.p.
- p. **Further Assurances.** From and after the date of this Agreement, each Party agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.
- q. **Debarment.** Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise

excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Therefore, by signing and submitting this Agreement, the Authority, as subgrantee, certifies as follows:

The certification in this clause is a material representation of fact relied upon by the SFMTA. If it is later determined that the subgrantee knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The subgrantee agrees to comply with the requirements of 2 CFR Parts 180, Subpart C and 1200, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The subgrantee further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- r. **MacBride Principles--Northern Ireland.** Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of the Authority acknowledges and agrees that he or she has read and understood this section.

IN WITNESS WHEREOF, The parties have executed this AGREEMENT on the date set forth below:

SAN FRANCISCO COUNTY
TRANSPORTATION AUTHORITY

CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

Tilly Chang Date:
Executive Director

Edward D. Reiskin Date:
Director of Transportation

CITY AND COUNTY OF SAN FRANCISCO
PLANNING DEPARTMENT

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

John Rahaim Date:
Director of Planning

By _____
Robin M. Reitzes
Deputy City Attorney

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No. _____
Dated: _____

Attest:

Secretary

List of Appendices

- A-1 Authority Scope of Work
- A-2 SFMTA Scope of Work
- B Authority Prop K Allocation Request Form
- C SFMTA Prop K Allocation Request Form
- D Sample Invoice
- E Transition Plan

AGREEMENT # A06/07-34

for

Van Ness Bus Rapid Transit

APPENDIX A-1

AUTHORITY SCOPE OF WORK

Phase 1A

1. Prepare an Environmental Document that meets the requirements for both an Environmental Impact Statement (EIS) in accordance with the provisions of the National Environmental Policy Act (NEPA) and an Environmental Impact Report (EIR) in accordance with the provisions of the California Environmental Quality Act (CEQA).
2. Prepare an Alternatives Analysis that meets the requirements of the Federal Transit Administration, and certify a Record of Decision on a Locally Preferred Alternative.
3. Prepare project development and design documents (through a consultant) for a Locally Preferred Alternative (LPA) representing 12% design. Consultant design tasks will include utility relocation designs, drainage facilities designs, communications systems, and stations, including architectural elements.
4. Conduct public involvement throughout the analysis, including public workshops, hearings, stakeholder and agency meetings as well as a high quality media campaign to support the overall public outreach efforts.
5. Establish and manage a Project Citizens Advisory Committee for regular public input throughout the environmental process.
6. Convene a Technical Advisory Committee with participation from relevant public agencies including SFMTA, Golden Gate Transit, MEA, and Caltrans.

Phase 1B

Scope of Work – Completion of Environmental Documentation, Conceptual Engineering of the LPA, and Completion of Caltrans Project Study Report/Project Report (Current Request)

The subject appropriation corresponds to the finalization of environmental documentation, refinement of the LPA such that it can be easily incorporated in the SFMTA's Conceptual Engineering Report (Preliminary Engineering – 30% Design), and completion of Caltrans Project Study Report/Project Report which satisfies Caltrans requirements for conceptual design.

The tasks to be conducted as part of this phase are as follows:

A - Project Management and Agency Coordination

- Project Management and Agency Coordination: Provide an additional 6 months of project management by the Authority and SFMTA staffs. The scope increases described in Tasks B, C, and D below extended the project by more than 18 months. However, the use of FTA funds has leveraged the existing Prop K allocations such that the current request would only need to fund 6 of those 18 months increases. The revised scope involves an additional 6 months of Authority and SFMTA work to manage the project staff and consultants, lead the project Technical Advisory Committee and Citizens Advisory Committee meetings, provide quarterly progress briefings to FTA and lead the Caltrans Project Development Team.

B/C – Environmental Impact Statement/Environmental Impact Report

- Selection of an LPA: The schedule in the December 2010 appropriation anticipated adoption of the LPA in summer 2011. However, the effort to develop and reach agreement on the LPA took longer than anticipated with the SFMTA and Authority Boards selecting the LPA in May and June of 2012, respectively.
- Refinement of LPA: After extensive analysis to select an LPA for the project, significant effort has been made to refine this alternative to be sure it meets the standards, preferences, and criteria of all agencies involved. Careful consideration was given to lateral transitions for safety, optimization of stop spacing, and preservation of trees. This extensive design work required greater involvement from the Authority's Capital Projects staff and the SFMTA's Engineering staff than was previously anticipated.
- Additional submissions of environmental related material to meet local and federal requirements: The Authority has had extensive consultation with the Office of Historic Preservation regarding the required procedures to ensure the lack of disturbance of archaeological findings. The SHPO has indicated a preference to perform detailed archival research before the start of CER. This task would have been required regardless, but the cost of consultant and staff work is being realized in this earlier phase.
- Extensive outreach: With the selection of the LPA, additional stakeholders became more involved in the project, voicing new concerns not previously known to the project team. Significant time has been spent ensuring the concerns are addressed to the greatest extent possible while also expediting the Project.

D – Caltrans Approvals

- As US 101 in San Francisco, Van Ness Avenue is owned by the California Department of Transportation (Caltrans). The project has needed to be coordinated carefully with Caltrans staff to ensure the LPA meets their standards for safety and operations while also achieving the goals of the project and City priorities.

E – Preliminary Engineering (30%) Design Transition and Startup

- No portion of the current request will be spent on the Conceptual Engineering Report (30% Design) effort being led by SFMTA. Funds for that phase of work will be covered through the parallel SFMTA allocation request. Tasks that cover the transition/startup of Preliminary Engineering were funded through the previous appropriation (Resolution 11-31).

AGREEMENT # A06/07-34

for

Van Ness Bus Rapid Transit

APPENDIX A-2

SFMTA SCOPE OF WORK

Phase 1A

A. Project Management Support

The Authority will lead the overall project management for Phase 1A of the Project. The SFMTA BRT Program Planner will serve as the single point of contact (POC) who will coordinate SFMTA input, updates, involvement, and technical work from all SFMTA sections. The SFMTA BRT Program Planner or his designee will staff the Authority-led Project Citizens Advisory Committee.

Task A1 - Startup and Work Plan – SFMTA will identify up to two representatives to serve on the selection panel for Consultant Services. SFMTA will review the draft consultant Scope of Work and provide input. The SFMTA BRT Program Planner will coordinate SFMTA review and input to the Consultant Scope of Work.

Deliverables: Consultant selection scoring sheets. Comments on draft Consultant Scope of Work.

Task A2 - Support Interagency Technical Advisory Committee – The SFMTA BRT Program Planner will help identify core SFMTA staff members to participate on the TAC from: service planning, traffic engineering; design engineering, fleet planning, and SFMTA’s in-house Major Environmental Analysis liaison. The SFMTA BRT Program Planner will also coordinate wider SFMTA participation on the TAC including input from the operations, facilities, construction, ADA review, and any other relevant SFMTA divisions. The SFMTA BRT Program Planner will disseminate project information within SFMTA and coordinate SFMTA input throughout the process.

Deliverables: Attendance at TAC meetings and data/information as needed to support meetings.

Task A3 – Support Authority Citizens Advisory Committee – SFMTA will attend meetings of an Authority-led Citizens Advisory Committee for the Van Ness Study. The CAC will be appointed by the Authority Board and will meet quarterly. The Authority will prepare for CAC meetings and administer the CAC.

Deliverables: Attendance at CAC meetings.

Task A4 – Support Coordination with State, Regional and Federal Agencies – SFMTA will participate in coordination with state, regional, and federal agencies led by the Authority, including Caltrans, the Metropolitan Transportation Commission (MTC), and the Federal Transit Administration (FTA)..

Deliverables: Meeting participation and background information as needed to support meetings.

B. Environmental Impact Analysis and Documentation

SFMTA will contribute to, review, and comment on an Environmental Document that meets the requirements for both an Environmental Impact Statement (EIS) in accordance with the provisions of the National Environmental Policy Act (NEPA) and an Environmental Impact Report (EIR) in accordance with the provisions of the California Environmental Quality Act (CEQA).

This Task will be conducted concurrently with Task C below.

Task B1 – Public Information Plan and Activities – Review and comment on a Consultant-led comprehensive public involvement plan to be used throughout the study effort. Review and comment on outreach materials including notices and workshop materials, and participate in outreach events including public workshops and public hearings. Facilitate the publicity of the Study on the SFMTA website, on SFMTA vehicles, and on transit shelters and at transit stops.

Deliverables: Participation in team and outreach meetings and outreach events. Installation of meeting notices and other outreach materials on SFMTA vehicles and in transit shelters.

Task B2 – Define Alternatives – Participate in the development of project purpose and need statement and resulting set of alternatives to be analyzed in the environmental document following scoping. Participation encompasses attending project team meetings to define alternatives; attending events of the public scoping process; and reviewing and commenting on Purpose and Need Statement and the definition of alternatives. SFMTA BRT Program Planner will coordinate comments on Purpose and Need and Definition of Alternatives within SFMTA. Up to three specific alternatives plus an operating plan variation will be analyzed, likely including a No Project/Baseline Alternative, a Center Lane BRT alternative, and operating plan variations.

Deliverables: Participation in team meetings and at public scoping events. Comments on Definition of Alternatives.

Task B3 – Administrative and Draft EIS/EIR – Provide input for technical analyses to support identification of impacts and mitigations, described below in Task C1. Review and provide input to the Authority in developing impact mitigation measures. Review and comment on Administrative Draft EIS/EIR. Coordinate SFMTA review and comment on DEIS/DEIR. Discussion regarding Final EIS/EIR.

Deliverables: Participation in team meetings. Consolidated SFMTA comments on Administrative DEIR/DEIS. Consolidated SFMTA comments on DEIS/DEIR. Comments on the Administrative Draft of the Final EIS/EIR.

Task B4 – Certification of Final EIR/Approved EIS – Participate in formal public hearings for final certification and adoption of the EIS/EIR, including a mitigation monitoring plan. Assist the Authority in seeking FTA Record of Decision/Notice of Determination in accordance with state and federal guidelines.

Deliverables: Participation in public hearings, team meetings, and FTA briefings.

C. Alternatives Analysis

Contribute technical analyses and support the development of an Alternatives Analysis that meets the requirements of the Federal Transit Administration guidelines. This Task will be conducted concurrently with Task B above.

Task C1 – Alternatives Analysis

Provide technical information necessary for Consultant to prepare analyses on Alternatives resulting from Task B2 above. Provide technical support for the evaluation of impacts and benefits including: traffic signal timing plans for all alternatives, review of Synchro traffic models, operating plan alternatives including span of service, stop locations and maximum load points. Develop D4 controller logic to support VISSIM modeling. Review and comment on travel demand forecasting results provided by the Authority. Review and comment on technical analyses conducted by Consultant, including: engineering and design drawings; traffic impact analysis; ridership; and user benefits estimates. Participate in team meetings. This Task will incorporate the results of Tasks C2 through C4 below.

Deliverables: Data and documentation as needed. Signal timing plans for all alternatives. Service and operating plan alternatives. D4 controller logic. Comments on Consultant-prepared technical analyses. Team meeting participation.

Task C2 – Capital Cost Estimates Part 1.

Review and comment on Consultant-updated capital cost estimates for all alternatives. Provide capital cost information as necessary to reflect all project elements affecting project cost and any mitigations.

Deliverables: Comments on Cost Estimates. Data and information to support cost estimates. Participation in team meetings.

Task C3 – Vehicle Selection, Facilities, and Operations & Maintenance Cost Estimates Part 1.

With Consultant support, lead the selection of a BRT vehicle and conduct related facilities planning. Develop the vehicle and facility component of each BRT alternative. Recommend a preferred vehicle and a facility plan to the full project team. Provide operations and maintenance cost model for use by Consultant in developing Operating and Maintenance cost estimates. Provide background information to support the development of Operating and Maintenance cost estimates, including costs by technology, vehicle requirements, and incremental facility and maintenance requirements. Review and comment on Consultant developed Operating and Maintenance cost.

Deliverables: Technical memo documenting vehicle and facility elements of each BRT Alternative. Technical memo documenting BRT vehicle selection and required facilities. Operating and maintenance cost model including necessary inputs and supporting detail. Comments on Consultant Operating and Maintenance costs.

Task C4 – Project Implementation Plan Part 1.

Provide inputs to the development of a project implementation plan as necessary to complete the Alternatives and Environmental Analyses. Provide agency financial capacity analysis for the FTA Small Starts Submittal. Provide funding and implementation information on No Project

elements led by SFMTA, including traffic signals (SFgo) and overhead contact system. Work with consultant to develop project implementation plan including construction staging, schedule, traffic management, and any other mitigations.

Deliverables: Financial capacity analysis. Documentation of SFMTA No Project elements. Input to and review of Project Implementation Plan.

Task C5 Small Starts Application

Participation in team meetings and FTA briefings. – Assist the Authority in the preparation of an FTA FY 2008/09 Small Starts Submittal for funding of final design. The Authority will lead the preparation of the Small Starts Submittal with Consultant assistance and participation, review, and comment by SFMTA. Work with Authority to obtain FTA approval for entry into Project Development.

Deliverables: Participation in team meetings and FTA briefings. Review and comment on Final FY 2008/09, 2009/10, 2010/11, and 2011/12 Small Starts application and annual submittal along with associated documents (due in August/September of 2012).

D. Project Development

Support Authority's Consultant in preparing preliminary engineering and design documents for the Locally Preferred Alternative (LPA) representing conceptual design and corresponding cost estimates.

Task D1 – Project Development Report

Coordinate input among SFMTA engineering divisions. Review and provide input to Design Guidelines. Provide design specifications, standards, and other technical information as necessary to prepare engineering designs to a conceptual level for the Locally Preferred Alternative. Review and comment on Consultant-prepared engineering designs. Prepare engineering designs for signal systems and overhead contact system (as applicable). Note: the original study budget does not include costs for this work, if applicable. .

Deliverables: Engineering POC. Review and comment on Draft and Final Design Reports and other preliminary engineering reports and drawings. Participation in project team meetings.

Task D2 – Cost Estimates Part 2 – After Consultant updates Task C2 above based on Task D1, SFMTA will review and comment on revised Consultant report.

Deliverables: Comments on revised capital cost report.

Task D3 – Vehicle Selection, Facilities, and Operations & Maintenance Costs Part 2 – Update Task C3 above based on Task D1. Provide revised operating and maintenance cost inputs as necessary.

Deliverables: Revised Operating and Maintenance cost inputs.

Task D4 – Project Implementation Plan Part 2 – Consultant will update Task C4 above based on Task D1. Review and comment on revised Consultant report.

Deliverables: Comments on revised Implementation Plan.

Phase 1B

See Appendices B and C: Prop K Allocation Request Forms for a full description of SFMTA's scope of work for Phase 1B.

APPENDIX B

**AUTHORITY PROP K ALLOCATION REQUEST FORM FOR VAN NESS BRT
EIS/EIR/PRELIMINARY ENGINEERING**

[ARF to be attached.]

APPENDIX C

**SFMTA PROP K ALLOCATION REQUEST FORM FOR VAN NESS BRT PRELIMINARY
ENGINEERING**

[ARF to be attached.]

APPENDIX D INVOICE FORM

[letterhead]

REQUEST FOR REIMBURSEMENT

INVOICE DATE:

INVOICE NO:

MEMORANDUM OF AGREEMENT (MOA) OR CONTRACT NUMBER

AGREEMENT REFERENCE INFORMATION:	<input style="width: 100%; height: 15px;" type="text"/>
PURPOSE:	<input style="width: 100%; height: 15px;" type="text"/>
PERIOD OF PERFORMANCE:	<input style="width: 100%; height: 15px;" type="text"/>
PERIOD COVERD:	<input style="width: 100%; height: 15px;" type="text"/>
AMOUNT:	<input style="width: 100%; height: 15px;" type="text" value="\$0.00"/>

Job Classification Title	Class #	Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Total Hours	Hourly Rate	Total Charges
Associate Engineer								0.0		\$ -
Transit Planner III								0.0		-
Transit Planner IV								0.0		-
Student Design Trainee I								0.0		-
Student Design Trainee III								0.0		-
Total Labor								0.0		\$ -

DIRECT EXPENSES (list):

<input style="width: 100%; height: 20px;" type="text"/>	
<input style="width: 100%; height: 20px;" type="text"/>	
<input style="width: 100%; height: 20px;" type="text"/>	
<input style="width: 100%; height: 20px;" type="text"/>	
TOTAL DIRECT EXPENSES	<input style="width: 80px; height: 20px;" type="text" value="\$ -"/>
TOTAL EXPENSES	<input style="width: 80px; height: 20px;" type="text" value="\$ -"/>

PERCENTAGE SHARE:

TOTAL THIS REQUEST

TOTAL CONTRACT

LESS REQUESTED TO DATE

BALANCE OF CONTRACT

Signature:

Submitted by:

Name Title

Date:

APPENDIX F

VAN NESS BRT EIS/EIR/PRELIMINARY ENGINEERING

Van Ness Avenue Bus Rapid Transit Project Management Transition Plan dated November 9, 2012

[Attached.]