

THIS PRINT COVERS CALENDAR ITEM NO.: 14

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Approving Contract No. 2018-49 for As-Needed Professional Services with Conduent Transport Solutions, Inc. to provide as-needed services to the support the Computer Aided Dispatch system and an Automated Vehicle Location system functions of the Muni Radio System, for a contract amount not to exceed \$7,000,000 for a term of five years.

SUMMARY:

- SFMTA implemented an integrated fleet management system solution provided by Conduent Transportation Solutions, Inc. in November 2016 as part of the Radio System Replacement Project Design Build Services, Contract.
- The new Radio System is integrated with a proprietary Computer Aided Dispatch system and an Automated Vehicle Location system (CAD/AVL).
- The CAD/AVL system is comprised of proprietary hardware and software that supports Transit Operations by communicating real-time data to transit managers, including vehicle location, schedule adherence status, breakdowns, and emergencies.
- Conduent hardware is used to integrate the CAD/AVL system and functions to the Radio System.
- Due to the proprietary nature of the Conduent CAD/AVL, these services are only available from Conduent Transport Solutions, Inc. (Conduent)
- The services are proprietary and are therefore procured as a sole source contract consistent with federal procurement requirements.
- There is no Small Business Entity (SBE) subcontracting participation requirement for this Contract.

ENCLOSURES:

1. SFMTAB Resolution
2. SFMTA Contract No. 2018-49 As-Needed Professional Services

APPROVALS:

DATE

DIRECTOR



March 12, 2019

SECRETARY



March 12, 2019

ASSIGNED SFMTAB CALENDAR DATE: March 19, 2019

PURPOSE

To approve Contract No. 2018-49 for As-Needed Professional Services with Conduent Transport Solutions, Inc. for a term of five years and a contract amount not to exceed \$7,000,000 to provide as-needed services to the support the CAD/AVL functions of the Muni Radio System.

STRATEGIC PLAN GOALS AND TRANSIT-FIRST POLICY PRINCIPLES

This item supports the following Strategic Plan Goals:

Goal 1: Create a safer transportation experience for everyone

Goal 2: Make public transportation the preferred means of travel in San Francisco

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

DESCRIPTION

In March 29, 2012, SFMTA Board of Directors approved Contract No. 1240, Document No: 00520, Radio System Replacement Project Design Build Services (), to implement the Radio System Replacement project. This implementation was required to replace the obsolete and failing former SFMTA radio system installed in the early 1970s. As part of the project, a fleet management system was implemented by Conduent Transportation Solution Inc. in November 2016 and was fully integrated with the new Ratio System.

This integrated fleet management system connects public transit vehicles with back-office scheduling and dispatching software. It provides location and tracking capabilities for transit vehicles and automatically collects vital real-time data such as GPS locations, schedule adherence status, breakdowns, and emergencies. This information is immediately available and is used by Muni Operators and Controllers to operate and manage the entire SFMTA fleet efficiently.

The fleet management solution includes a proprietary Computer Aided Dispatch and Automated Vehicle Location system (CAD/AVL). The CAD/AVL system is comprised of proprietary hardware and software that was installed on all revenue vehicles, as well as, at the fixed-end servers, which facilitates point-to-point internal data transfer, to provide the needed functionality and compatibility with the radio communication systems.

As the CAD/AVL system is an integral part of the SFMTA Radio Communications System and Transit fleet operations and management; frequent updates and periodic software upgrades will be critical to keep the system maintained and supported. Due to the proprietary nature of Conduent products implemented at the SFMTA, services necessary for the maintenance and upgrade to the CAD/AVL system are only available from Conduent Transport Solutions.

This Contract was procured in accordance with federal requirements for sole source contracts.

There is no Small Business Entity (SBE) subcontracting participation requirement for this Contract.

Based on Task Orders issued by the SFMTA, Conduent will service all CAD/AVL software and hardware, will provide and support required system updates, will develop new features and improve system functions as required by SFMTA business needs, will perform comprehensive testing, produce documentation, and provide integration support related to Conduent software and hardware products. Conduent will provide detailed feasibility, analysis, design, implementation, support, upgrade, and end-of-life plans for proposed systems to ensure SFMTA project/task order requirements are met.

The following work tasks are necessary to support CAD/AVL system enhancement and integration needs:

- Install of new software and hardware updates.
- Develop new required features and enhancements.
- Perform comprehensive system and performance testing and safety certifications.
- Produce user guide documentation & training collateral.
- Conduct training sessions at SFMTA.
- Provide support plan and upgrade path for the installed systems.
- Provide as-needed specialized technical support during revenue service.
- Provide project management support as needed.
- Provide services incidental to the projects listed above.

PUBLIC OUTREACH AND STAKEHOLDER ENGAGEMENT

To develop requirements and scope for this Contract, project staff consulted key stakeholders from Transit and Central Subway Project at the SFMTA and incorporated divisional business requirements into the scope of work provided by the key stakeholders.

Public outreach was not done as this Contract is for as-needed technical consulting services; most of which will be software and hardware enhancements that are proprietary products and services of Conduent. These enhancements will not have an impact on the environment or the any adverse impacts to the public.

ALTERNATIVES CONSIDERED

The alternatives to issuing Contract No 2018-49 would be for the SFMTA to:

1. Attempt to maintain existing proprietary products and services itself. This option would result in invalidating Conduent's warranty, which would undermine maintenance of the CAD/AVL.
2. Do nothing, which will put transit operations and CAD/AVL system functionality and maintenance at risk.

The alternatives to issuing Contract No. 2018-49 do not meet the SFMTA requirements in maintaining CAD/AVL system in good-working condition. Due to Conduent's proprietary products and services, any attempt to either maintain software or develop new features and enhancements will require services from Conduent.

FUNDING IMPACT

The term of the Contract is five years for the total amount of \$7,000,000. Payment is based on Conduent's completing individual Task Orders issued by the SFMTA. The funding source will be identified at time of task order issuance.

This Contract is procured through the single source requirements for sole source contracting under federal guidelines.

ENVIRONMENTAL REVIEW

On June 1, 2018, the SFMTA, under authority delegated by the Planning Department, determined that Contract No. SFMTA 2018-49 for Conduent Technical Professional Services is not defined as 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

On May 7, 2018, the Civil Service Commission approved Contract number #40072-17/18 for As-Needed Professional Services with Conduent Transport Solutions.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve Contract No. 2018-49 for As-Needed Professional Services with Conduent Transport Solutions, Inc. to provide as-needed services to the support the Computer Aid Dispatch System and an Automated Vehicle Location System functions of the Muni Radio System, for a contract amount not to exceed \$7,000,000 for a term of five years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, In March 29, 2012, San Francisco Municipal Transportation Agency Board of Directors approved Contract No. 1240, Document No: 00520, Radio System Replacement Project Design Build Services, to implement the Radio System Replacement project; and,

WHEREAS, This implementation was required to replace the obsolete and failing former SFMTA radio system installed in the early 1970s; and,

WHEREAS, As part of the project, a fleet management system was implemented by Conduent Transportation Solution Inc. in November 2016 and was fully integrated with the new Ratio System; and,

WHEREAS, This integrated fleet management system connects public transit vehicles with back-office scheduling and dispatching software; and,

WHEREAS, It provides location and tracking capabilities for transit vehicles and automatically collects vital real-time data such as GPS locations, schedule adherence status, breakdowns, and emergencies; and,

WHEREAS, This information is immediately available and is used by Muni Operators and Controllers to operate and manage the entire SFMTA fleet efficiently; and,

WHEREAS, The fleet management solution includes a proprietary Computer Aided Dispatch and Automated Vehicle Location system (CAD/AVL); and,

WHEREAS, The CAD/AVL system is comprised of proprietary hardware and software that was installed on all revenue vehicles, as well as, at the fixed-end servers, which facilitates point-to-point internal data transfer, to provide the needed functionality and compatibility with the radio communication systems; and,

WHEREAS, As the CAD/AVL system is an integral part of the SFMTA Radio Communications System and Transit fleet operations and management; frequent updates and periodic software upgrades will be critical to keep the system maintained and supported; and,

WHEREAS, Due to the proprietary nature of Conduent products implemented at the SFMTA, services necessary for the maintenance and upgrade to the CAD/AVL system are only available from Conduent Transport Solutions; and,

WHEREAS, This Contract was procured in accordance with federal requirements for sole source contracts; and,

WHEREAS, There is no Small Business Entity (SBE) subcontracting participation requirement for this Contract; and,

WHEREAS, On June 1, 2018, the SFMTA, under authority delegated by the Planning Department, determined that Contract No. SFMTA 2018-49 for Conduent Technical Professional Services is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves Contract No. 2018-49, As-Needed Professional Services, with Conduent Transport Solutions, Inc. to provide as-needed services to the support the Computer Aid Dispatch System and an Automated Vehicle Location System functions of the Muni Radio System, for a contract amount not to exceed \$7,000,000 for a term of five years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 19, 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
Conduent Transport Solutions, Inc.
for
As-Needed CAD/AVL Professional Work**

CONTRACT NO: 2018-49

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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
Conduent Transport Solutions, Inc. for As-Needed Professional Services
Contract No. SFMTA-2018-49 (FTA)**

This Agreement is made this 31st day of January 2019, in the City and County of San Francisco, State of California, by and between Conduent Transport Solutions, Inc., 7160 Riverwood Drive, Columbia, Maryland 21046 (Contractor) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA wishes to contract with a qualified consulting firm that will provide as-needed professional Work and technical assistance concerning CAD/AVL system provided by Conduent.

B. This Agreement was procured through the single source requirements for sole source contracting under federal guidelines, consistent and in compliance with FTA Circular 4220.1E FTA Circular 4220.1F, Chapter VI, paragraph 3.1. – Other Than Full and Open Competition.

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

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

E. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number #40072-17 /18 on May 7, 2018.

Now, THEREFORE, the parties agree as follows:

Article 1 Purpose of Contract, Task Orders, and Defined Terms

1.1 Purpose of Contract. The purpose and intent of this Contract is for the Contractor to provide to the SFMTA services, Software, Documentation, Software configuration and customization, labor, supervision, materials, equipment, and other required acts (“Work”), as generally described in Appendix A to this Contract, that are necessary to maintain, upgrade, modify, configure, customize, and expand (“support”) the Computer-Aided Dispatch and Automatic Vehicle Location (CAD/AVL) systems provided by Contractor and implemented by Harris Radio Corporation under SFMTA Contract 1240 for the SFMTA’s Replacement Radio CAD/AVL System. Contractor was a subcontractor to

Harris Radio Corporation under Contract 1240 and provided CAD/AVL technology (Software and equipment) to be used in the replacement radio system implemented under Contract 1240. Contractor's obligations under this Contract are limited to Work necessary to support the CAD/AVL System, as generally described below and in Appendix A to this Contract. Contractor is not responsible for elements of the radio system for which Contractor was not responsible under Contract 1240.

1.2 Task Orders.

1.2.1 The SFMTA will issue Task Orders to Contractor for Work necessary to for the purpose described in the preceding paragraph. A Task Order will describe: a) the Work Contractor shall perform; b) the time in which that Work (and any milestones or subtasks) shall be completed; c) information, documents, or tasks that the SFMTA will provide or perform to assist Contractor in performing the Work; d) the warranty period of said Work; e) acceptance and testing criteria; f) the compensation the SFMTA shall pay to Contractor for properly performed and completed Work.

1.2.2 A Task Order must be signed by both authorized representatives of each party to be valid. The Director of Transportation or his designee is authorized to approve Task Orders on behalf of the SFMTA. The Portfolio Leader US Transit is authorized to approve Task Orders on behalf of Contractor.

1.2.3 A Task Order amends this Contract only as to those issues described in this Section 1.2 and the specific scope of Work described in the Task Order.

1.3 Defined Terms.

The following definitions apply to this Agreement:

"Agreement" and **"Contract"** means this contract document, including all Included Appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.

"CAD/AVL" means Computer Aided Dispatch (CAD) system and Automated Vehicle Location (AVL) system, referred to as CAD/AVL. elements of which Contractor provided to the SFMTA as part of the SFMTA's radio system.

"CCO" means SFMTA Contract Compliance Office.

"City" or **"the City"** means the City and County of San Francisco, a municipal corporation.

"CMD" means the Contract Monitoring Division of the City.

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

"Contract Amount" means the amount not to exceed amount of compensation stated in Section 3.3.1 of this Contract.

“**Contractor**” means Conduent Transport Solutions, Inc., 7160 Riverwood Drive, Columbia, Maryland 21046.

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

“**Data**” means the information in electronic or printed form entered into, sorted by, produced by, or otherwise generated by the System.

“**Deliverables**” means Contractor’s Work product resulting from the Work that are provided by Conduent 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.

“**Documentation**” means the technical publications relating to the use of the Licensed Software, such as reference, installation, user, administrative and programmer manuals, and user training materials provided by Contractor to City.

“**Effective Date**” means the date upon which the SFMTA in writing directs the Contractor to commence the Work and confirms that the City’s Controller has certified the availability of funds for this Agreement as provided in Section 3.1.

“**Licensed Software**” (“**Software**”) means one or more of the proprietary computer software programs that Contractor provided to the SFMTA under Contract 1240 or this Contract, Documentation and all related materials, all Software corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form.

Object Code means the machine readable compiled form of Licensed Software provided by Contractor under Contract 1240 or this Contract.

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

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

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

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

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

“**Services**” means Work.

“Small Business Enterprise” or “SBE” means a for-profit, small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in 49 Code of Federal Regulations (CFR) Section 26.5.

Source Code means the human readable compliable form of the Licensed Software provided by Contractor.

Specifications means the functional and operational characteristics of the Licensed Software as described in Contractor’s current published product descriptions and technical manuals.

System means the CAD/AVL Software and ancillary equipment Contractor furnished to the SFMTA under this Contract.

Task means an amount of Work described in a Task Order issued under this Contract.

Task Order means an agreement issued under this Contract under which Contractor will perform a Task or Tasks described in the Task Order, within a specified period, for compensation stated in the Task Order, in accordance with the requirements set out in this document and the Task Order. A Task Order amends this Contract only as to the Work to be performed, period of performance with the Contract Term, and compensation to be paid with the Contract Amount.

Work means the labor, general and professional services, Software, Documentation, Software configuration and customization, training, support, maintenance, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Contract and Task Orders issued under this Contract, as described in the “Scope of Work” attached as Appendix A.

Article 2 Term of the Agreement

2.1 The term of this Contract shall be five years, commencing on the Effective Date, and expiring five years later, unless earlier terminated as otherwise provided herein. The City may at its option extend the term an additional two years by providing Contractor with written notice of such intent not less than thirty (30) days prior to the date of expiration.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Contract 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, however, City will pay Contractor for the costs of the Work completed prior the Contractor’s receipt of notice that funding for Work under this Contract

Work has been reduced, eliminated, or not reauthorized. 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. Contractor shall not be obligated to perform Work that the SFMTA has not included in its approved budget or that the City Controller has not certified. The SFMTA shall not issue Task Orders or otherwise direct Contractor to perform Work where funds to compensate Contractor are not included in an approved budget or that the City Controller has not certified. The SFMTA will provide Contractor confirmation of the amounts certified by the City Controller for this Contract for every Task Order issued under 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 Amount. Compensation under this Agreement shall be based on either a negotiated lump sum price per task or subtask, or actual direct costs plus a negotiated fixed profit per subtask and task. In no event shall the amount of this Agreement exceed Seven Million Dollars (\$7,000,000) for the base term of the first five years, and an amount not to exceed Two Million Dollars (\$2,000,000) for the two-year option period.

3.3.2 Method of Computing Compensation. The SFMTA will compensate Contractor for a Task Order using negotiated lump sum pricing for each Task. A negotiated lump sum price compensates Contractor for all costs and expenses (including but not limited to salary and other labor costs, benefits, materials and equipment costs, applicable sales tax and profit). Contractor assumes the risk that the level of effort required to complete a Task may exceed the negotiated lump sum compensation negotiated for a Task. The SFMTA will not receive a credit or refund if the Contractor completes the Task with less effort or resources than estimated when the parties negotiated the lump sum price for that Task. The parties may divide the negotiated lump sum price for a Task into milestone payments that the City shall pay upon Contractor's completion of Work or deliverables specified in the Task Order. For task orders that are performed on a time and materials basis (that is, not negotiated lump sum), a cost of

living increase (COLA) will be applied to task orders commencing one year after the effective date of this Contract. The COLA will apply to the unit rates listed in Exhibit B, equal to the annual increase or decrease of the Consumer Price Index for Urban Consumers (CPI-U) for San Francisco-Oakland-Hayward published by the U.S. Bureau of Labor Statistics.

3.3.3 Payment Limited to Satisfactory Work. Contractor is not entitled to any payments from City until the SFMTA approves Work, including any furnished Deliverables, as satisfying all 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 Work even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Work may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Work 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. If the City accepts part of a Deliverable and begins beneficial use of that Deliverable, the City will pay Contractor for the portion of the Deliverable that is in use.

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

3.3.5 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and must include the Contract Progress Payment Authorization number. The Contractor shall submit invoices for all allowable charges incurred in the performance of each task order. No more than one invoice shall be submitted in a month and the invoice may be submitted electronically. The Contractor shall submit invoices with each invoice containing the following information:

- (a) Contract Number
- (b) Task Order Number
- (c) Description of the Work performed, or Work rendered
- (d) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced
- (e) Other direct costs (if applicable)
- (f) Subconsultant costs supported by invoice itemization in the same format as described here (if applicable)
- (g) Fixed Fee for current invoice period and amount of Fixed Fee as of date of invoice. Fixed Fee will be calculated as a prorated portion of the total fixed fee for the task for which Contractor seeks payment.
- (h) Total charges to SFMTA.
- (i) SFMTA Form No. 6 – Progress Payment Report

3.3.6 Progress Payment Form. The Controller is not authorized to pay invoices submitted by Contractor that are not accompanied by a Progress Payment Form. Contractor shall use the Project Payment Form set out in Appendix B to this Contract.

3.3.7 Not Used. (SBE Payment.)

3.3.8 Electronic Payment.

(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.

3.3.9 Grant-Funded Contracts.

(a) **Disallowance.** If Contractor requests or receives payment from City for Work, 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 Contract Requirements" attached as Appendix D 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 directly relating to its Work under this Agreement. 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. Contractor's costs data and other financial information that the SFMTA or its funding agencies may access in the course of an audit may include confidential and proprietary information, which the SFMTA shall not disclose except as required by law. The SFMTA shall provide Contractor notice if it receives a public records request for documents concerning Contractor's finances or a public records request for other information that Contractor has identified as proprietary and confidential. The SFMTA shall endeavor to provide Contractor not less than eight days' notice of such request. This Contract, its Appendices, and Contractor's invoices for payment and SFMTA payment records are public records subject to disclosure without notice to Contractor.

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

Article 4 Work and Resources

4.1 Work Contractor Agrees to Perform. Contractor agrees to perform the Work 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, Work beyond those Work listed in Appendix A, unless Appendix A is modified as provided in Section 11.5 (Modification of this Agreement).

4.2 Priority of Documents. In case of conflict between this Contract (that is, this document and its Included Appendices) and any Task Order, this Contract shall govern.

4.3 Information and Data. The Contractor shall request in writing any information and data it will require to perform Task Orders. The Contractor shall identify the timing and priority for which this information and data will be required. The Contractor and City shall reach agreement as to the availability and delivery time for this data and information during initial task negotiations.

4.4 Presentations. In the performance of assigned tasks, the Contractor, if requested by City, shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups. For any presentation that is beyond one that is commercially reasonable in scope and manner, City and Contractor will enter a mutually agreed contract adjustment to provide Contractor with equitable compensation for such a presentation.

4.5 Task Requirements. The SFMTA will define Task requirements. The cost and estimated time to perform the task fully will be agreed upon in advance of the start of Work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below.

4.5.1 Scope of Work. The SFMTA will prepare the scope of Work and a proposed time of completion, using the Task Order form (Appendix C) and transmit the Task Order form to the Contractor with a request for a proposal for the performance of the task.

4.5.2 Contractor Proposal. The Contractor shall prepare and submit a proposal for the task showing:

(a) A Work plan that includes a detailed description by subtask of the Work to be performed and the means and methods that will be used to perform it;

(b) Milestones for completion for each subtask and deliverables at each milestone and schedule of completion;

(c) Personnel and the Subconsultants assigned to each part of the Work along with a resume or curriculum vitae that indicates why such personnel are qualified to perform the Work; and prior experience in performing Work of this nature; if not included in the original proposal;

(d) A detailed lump sum cost or an amount-not-to-exceed for each task or subtask referencing the hourly billing rates (fully burdened) set out in Appendix B, and a negotiated fixed fee.

(e) Where Contractor shall perform Work on a time and materials basis, Contractor's proposal shall describe the Work to be performed, the assigned personnel, their duties, and estimated number of hours to perform the Work, and a total amount-not-to-exceed of compensation. Contractor's proposal shall include:

(i) Estimated hours and direct salaries by position (hourly rates by position as listed in Appendix B for both Contractor and Subconsultant personnel). Labor hours for preparing monthly invoices or filling out required SBE forms will not be allowed. Contractor will manage Subconsultants so additional Subconsultant program management labor hours will not be allowed. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the negotiated billing rates listed and not at one and one-half times the billing rate;

(ii) Overhead, including salary burden costs (% rates as listed in Appendix B) for both Contractor and Subconsultants; to arrive at this cost, the overhead rate is multiplied by the cost in (1) above;

(iii) Estimated reasonable out-of-pocket expenses;

(iv) Proposed profit as follows: Total profit/mark up of each Task Order as fixed fee amount not to exceed seven percent of total amount of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Contractor, Subconsultant(s) or combination thereof. Direct costs not included in Appendix B, profit/mark-up to be determined in budget for each task order.

4.5.3 Negotiation of Cost and Profit. The Project Manager will review the proposal and negotiate either a lump sum price or a fixed fee (covering profit and all costs not included in the fully loaded hourly labor rates set out in Appendix B) to perform the Work of each subtask and task and either a total price or a total cost not to exceed for the task.

4.5.4 Record of Negotiations. The Project Manager will document the negotiations and any agreement in a Record of Negotiations.

4.5.5 Not Used. (Subcontracting Goals.)

4.5.6 Controller Certification. The Project Manager will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

4.5.7 Notice to Proceed. After certification, the Project Manager will send to the Contractor a written NTP and task number. The Contractor shall use the task number when submitting invoices to the Project Manager for payment. The Contractor shall not commence Work on any task until it receives a written NTP for the task.

4.5.8 Changes. Agreed lump sum prices for subtasks and tasks cannot be modified unless there is a material change in the scope of Work of the task. If there is a material change in the scope of Work of a task, then a proposal, negotiations, and Record of Negotiations shall be required before changes to agreed lump sum prices and fixed fee can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

4.5.9 Failure to Agree on Terms of a Task Order. In the event that the SFMTA and Contractor cannot reach agreement on the terms of the Task Order, the SFMTA may cancel the Task Order, may direct the Contractor to proceed under force account as described in Article 4.5.10, or deem the Contract as Terminated for Convenience, and have the Work accomplished through other available sources.

4.5.10 Force Account Work.

1. General. When additions, deletions, or revisions in the Work are to be paid for on a Force Account basis, all direct costs (labor rates will be based on hourly billing rates set out in Appendix B) and reimbursable overhead costs necessarily incurred and paid by Contractor

shall be subject to the approval of City and adjustments to the Contract will be determined as set forth herein. Contractor shall receive a mark-up of direct costs not to exceed 15 percent, which shall compensate Contractor for its profits and any overhead costs that are disallowed (that is, not reimbursable) under federal law where the SFMTA uses federal grant funds to pay for Work.

- A. If City provides performance-based specifications for Force Account Work, Contractor shall be responsible for developing a design proposal for integrating, interfacing and incorporating such Work in the Project for acceptance by the City.
- B. City will direct Contractor to proceed with the Work on a Force Account basis, and City will establish a “not to exceed” budget.

2. Notification and Verification. Contractor shall notify City in writing at least 12 hours in advance of its schedule before proceeding with the Force Account Work. All Force Account Work shall be documented and approved in advance in writing by City. The Contract Sum shall not be adjusted for Force Account Work if Contractor fails to provide timely notice to City before commencing the Force Account Work, unless the Work at issue will result in a reduction in the Contract Sum, in which case the Contract Sum will be adjusted by an amount determined to be equitable by City. In addition, Contractor shall notify City when the cumulative costs incurred by Contractor for the Force Account Work equal 70 percent of the budget pre-established by City. The Contract Sum will not be adjusted for Force Account Work exceeding the “not to exceed” budget amount if Contractor fails to provide the required notice before exceeding 70 percent of the Force Account budget.

3. Reports. Contractor shall diligently proceed with the approved Force Account Work and shall submit to City not less than weekly a Force Account report. The report shall provide an itemized, detailed account of the Force Account labor, material, and equipment. Contractor’s authorized representative shall complete and sign the report. Contractor shall not be compensated for Force Account Work for which said timely report is not completed and submitted to City.

4. Records. Contractor shall maintain detailed records of all Work done on a Force Account basis. Contractor shall provide a weekly Force Account summary indicating the status of each Force Account Work directive in terms of actual costs incurred as a percent of the budget for the respective Force Account Work directive and the estimated percentage completion of the Force Account Work.

5. Agreement. If Contractor and City reach a negotiated, signed agreement on the cost of a Change Order while the Work is proceeding on a Force Account basis, Contractor’s signed written reports shall be discontinued, and all previously signed reports shall become invalid.

4.6 Software Configuration and Customization. As SFMTA operational needs change, the SFMTA anticipates that it will need to modify the CAD/AVL System by adding new Software modules or making changes to the existing CAD/AVL System by altering the configuration of elements of the Software or customizing the Software. When requested by SFMTA, Contractor shall recommend to the SFMTA the most efficient and cost-effective means to achieve SFMTA’s desired result. But Contractor shall use its best efforts to inform

the SFMTA when a change to the Software will impair or otherwise negatively impact existing CAD/AVL functions and performance. Contractor shall use its best efforts to ensure that any changes made to the Software can be readily and easily reversed so that the Software returns the CAD/AVL System to its status and functionality immediately prior to the implementation of the change.

4.7 Key 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 Work. Contractor shall 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. The Contractor agrees that the following key team members shall be committed and assigned to provide Work under this Agreement to the level required by SFMTA for the term of the Agreement and shall also available at the local Contractor offices within the San Francisco Bay Area as needed:

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Contractor shall advise SFMTA immediately any time one of the Key Team Members deviates from its committed role or time on the Task Order (e.g., is assigned to another project). SFMTA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

4.8 Current Workload and Available Resources. The Contractor covenants that its current workload and the workload of its Subconsultants will not affect the commencement and the progress of the Work under this Agreement. The Contractor shall ensure that all the necessary professional, technical and support personnel, including those of the Subcontractors, are available, ready and mobilized to perform Work within two weeks of the receipt of NTP on a particular task. Contractor shall make good faith efforts to have all contracts signed with Subcontractors within three weeks of NTP. Contractor shall provide copies of said subcontracts to the SFMTA upon request. Contractor deems its subcontracts to be confidential and proprietary. The SFMTA shall treat Contractor's subcontractor agreements as confidential and proprietary, in the same manner it will treat Contractor's financial information, as provided in Section 3.4, above.

4.9 Information and Data. The Contractor shall request in writing any information and data it will require from the Agency for its Work. The Contractor shall identify the timing and priority for which this information and data will be required in its Task Order proposal. The Contractor and Agency shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Plan. The SFMTA shall provide the

information and data to the Contractor within agreed deadlines or period, or the SFMTA must provide the Contractor with a Task Order adjustment that accounts for the additional schedule time and compensates Contractor's reasonable costs to Contractor for delays caused solely by the SFMTA. Contractor shall mitigate delay to best of its abilities.

4.10 Transmittal of Work Product. When requested by Agency's Project Manager, and after completion of each task and subtask, the Contractor shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its Subconsultants' Work on this Agreement. The Contractor's Project Manager and Key Personnel shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to Agency. Contractor shall deliver Work Product to the SFMTA electronically in format(s) agreed by the parties.

4.11 Not Used. (Reproduction of Work Product.)

4.12 Agency's Responsibilities Regarding Submittals. The Agency and Contractor will review and comment on the other party's submittals generally within two calendar weeks of submittal or as provided in the applicable Task Order. The Agency and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the approved Task Order. The Agency's review and comments of Contractor submittals shall in no way relieve the Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Contractor of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

If Contractor considers certain Agency review comments or directives, either written or oral, to require Work efforts not included in the approved Program Management/Implementation Plan, the Contractor shall provide Agency with either a written request for clarification of intended Work or a proposal to proceed with Additional Work within five working days of discovering the perceived extra Work, in strict accordance with the procedures specified subsection 4.5.7 above.

4.13 Subcontracting. Contractor may subcontract portions of the Work only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the Work required to perform the Work. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. The City approves the following Subcontractors listed below.

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

4.14.1 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 Work 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 Work 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, or within the period agreed to by the City, 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.

4.14.2 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 Work 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.

4.15 Assignment. The Work 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.

4.16 Warranty. Contractor warrants to City that the Work 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 Work are performed so as to ensure that all Work 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 and \$2,000,000 general aggregate 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 \$2,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Work.
- (e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 per claim. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of Work defined in the contract and shall also provide coverage for the following risks:

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

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

(f) Contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form. Contractor shall maintain this coverage for a period not less than five years beyond the termination or expiration of this Contract.

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 The General Liability Insurance and Commercial Automobile Insurance policies shall be endorsed to provide ten (10) days' advance written notice to the City of cancellation for nonpayment of premium, and thirty (30) days' advance written notice to the City of cancellation, for reasons other than nonpayment of premium. Contractor shall provide 30 days advance written notice to the City of any intended non-renewal or reduction in coverage. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties." All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

5.1.4 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 Should any 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 Work, 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 Work, 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 negligent performance of this Agreement or willful misconduct, 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 Work.

5.2.1 Limitations. No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities.

5.2.2 Intellectual Property Infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, Work or deliverables supplied in the performance of Work. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract. (See also Section 9.10.)

Article 6 Liability of the Parties

6.1 Liability of City. City's payment obligations under this Contract shall be limited to the payment of the compensation provided for in Article 3, above.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property resulting from Contractor's 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.

6.3.1 The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Contractor for any type of special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising under or related to the Work or this Contract or under any cause of action related to the subject matter of this Contract, whether in contract, tort (including negligence), strict

liability, or otherwise. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension, cancellation or rescission of the Work or this Contract, negligence or strict liability by the City, its boards and commissions, and their representatives, consultants or agents.

6.3.2 Except as stated here, Contractor shall have no liability to City for any type of special, consequential or incidental damages arising out of or connected with Contractor's performance of the Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the Work under this Contract, and negligence or strict liability of Contractor. This limit of liability shall NOT, however, apply to, limit or preclude:

1. Contractor's obligation to pay Liquidated Damages as set forth in the Contract Documents;
2. Damages caused by Contractor's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts;
3. Contractor's obligations to indemnify and defend the City and other indemnified parties as set forth in Section 5.2;
4. Contractor's liability damages that fall within the insurance coverages required under the Contract;
5. Contractor's liability for statutory damages imposed by the City upon Contractor under City Ordinances and Municipal Codes;
6. Fines, penalties and statutory damages, including punitive damages, treble damages, and statutory attorney fees and costs;
7. Contractor's warranties and guarantees under the Contract Documents;
8. Damages and other liability arising under claims by third parties for loss or damage to property or personal injuries, including wrongful death;
9. Liability for violation of environmental regulations and laws;
10. Damages and other liability for infringement of any copy right, patent, or other intellectual property right.

include an aggregate limitation of Contractor's liability which shall be agreed to by parties prior to execution of, or initiation of any work under, said Task Order.

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 Work 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 Conduent shall 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 thirty (30) days prior 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 affect 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 Work 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, Work, 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 Work 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 thirty (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 compensation to Contractor, without for all Work performed prior to the specified termination date, for which the SFMTA has not already tendered payment, and the total of any Contractor costs resulting directly from the termination. Lost profits are not costs and the SFMTA shall not compensate for lost profits. 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.

(b) 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 Work 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.

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 Work 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.

8.1.6 The City's payment obligation under this Section shall survive termination of this Agreement. SFMTA'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 material term, covenant or condition contained in any of the following Sections of this Agreement:

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

(b) Contractor fails or refuses to perform or observe any other material 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 thirty (30) days or other reasonable period stated in 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, in solvency 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. 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 incurrance at the maximum rate then permitted by law. If Contractor defaults and does not pay the City's costs and expenses incurred in effecting such a cure, then the City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

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

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

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

8.4 Rights and Duties upon Termination or Expiration.

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

- 3.3.4 Payment Limited to Satisfactory Work
- 3.3.10(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
- Article 9 Rights in Deliverables

- 11.6 Dispute Resolution Procedure
- 11.7 Agreement Made in California; Venue

11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
13.1	Nondisclosure of Private, Proprietary or Confidential Information

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

Article 9 Rights In Deliverables

9.1 Ownership of Results. All Deliverables shall be licensed to City in accordance with the license grant provided in Section 9.3 below. With respect to any Deliverables which include documentation, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, the copyright thereto shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities. Notwithstanding any other term in this Agreement, Contractor and any subcontractor shall continue to own their respective pre-existing proprietary property.

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

identified as a Work for Hire, then such Software and Documentation shall be deemed licensed to the SFMTA, as provided in the following Section 9.3.

9.3 Grant of License. Subject to the terms and conditions of this Agreement, Contractor grants City a non-exclusive and non-transferable perpetual enterprise license to use the Licensed Software and Documentation for City's internal purposes. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Agreement grants City no title or right of ownership in the Licensed Software.

9.4 Source Code. Contractor agrees that in the event it becomes bankrupt, no longer operates as a going concern or discontinues its operations or ceases to provide maintenance and support for the Licensed Software, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide City, without charge, one (1) copy of the then-current Source Code for all of the programs and all supporting Documentation for the Licensed Software then operating and installed at City's locations. If City should obtain the Source Code and the Documentation pursuant to this section, the only use made of the Source Code and the Documentation will be for the proper maintenance of the Licensed Software in connection with City's use of the Licensed Software as provided for, and limited by, the provisions of this Agreement. Contractor shall give the SFMTA not less than one year notice before it discontinues to support for the Licensed Software.

9.5 Restrictions on Use. City is authorized to use the Licensed Software only for City's internal purposes. City agrees that it will, through its best efforts, not use or permit the Licensed Software to be used in any manner, whether directly or indirectly, that would enable any unauthorized person or entity to use the Licensed Software. For the purpose of back up or a disaster recovery plan or with respect to the use of computer software in its municipal operations, City may make one copy of the Licensed Software for archival purposes and use such archival copy.

9.6 Documentation. Contractor shall provide City with the Licensed Software specified in the Authorization Document, and a minimum of two copies of the Documentation per installation. Contractor grants to City permission to duplicate all printed Documentation for City's internal use.

9.7 Proprietary Markings. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Licensed Software or any related materials or Documentation.

9.8 The City shall own all Data entered, gathered, acquired, accumulated, processed, and/or stored by the System, without limitation. Contractor shall have no right or claim whatsoever to the ownership, control or use of said Data. For avoidance of doubt, the City may in its sole and absolute discretion process, store, manipulate, export into other systems, and otherwise use any Data for any purpose, governmental or commercial.

9.9 Issues to be Addressed in Task Orders. The parties shall address in a Task Order for Licensed Software (including configuration and customization of existing Software) the following:

- (a) Time, place and manner of delivery and risk of loss in shipping
- (b) Warranty
- (c) User and maintenance training
- (d) Installation.
- (e) Software media storage
- (f) Delivery
- (g) Acceptance Testing
- (h) Contractor Maintenance and Updates
- (i) Changes in Operating System

9.10 Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Licensed Software infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, 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 Licensed Software 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.

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

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

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 Work, 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 Nondisclosure of Private, Proprietary or Confidential Information.

10.4.1 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 Work. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

10.4.2 In the performance of Work, 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.

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 Not Used. (Small Business Enterprise Program.)

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

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

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

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe Work facilities or

to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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 Work, 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 Not Used. (Slavery Era Disclosure.)

10.13 Not Used. (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.

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:

Zahra Afrookhteh
Project Manager III
San Francisco Municipal Transportation Agency
1 South Van Ness, 3rd Floor
San Francisco, CA 94103
Zahra.Afrookhteh@sfmta.com

To Contractor:

Altamash Ahmed
Conduent Transport Solutions, Inc.
7160 Riverwood Drive, Columbia, Maryland 21046
Altamash.Ahmed@conduent.com

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

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Work 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 Not Used.

11.4 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Work, 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 Work 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 Work described below in accordance with the terms and conditions of this Agreement, implementing task orders as requested by the SFMTA, and as provided in this Agreement.

11.14 Force Majeure. Dates or times by which either Party is required to perform under this Agreement, excepting the payment of any fees or charges due hereunder, shall be postponed to the extent that any party is prevented from meeting them by causes beyond its reasonable control that the party could not have reasonably anticipated and avoided or otherwise mitigated to avoid delay

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 Work 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 Work. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 In the performance of Work, 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 Not Used. (Payment Card Industry (PCI) Requirements.)

13.3 Not Used. (Business Associate Agreement.)

Article 14 MacBride Principles

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.

Article 15 Included Appendices. Documents listed below are incorporated by reference as though fully set forth herein.

- A. Appendix A - Scope of Work
- B. Appendix B – Calculation of Charges and Payment Form
- C. Appendix C – Task Order Request Form
- D. Appendix D - U.S. DOT Federal Requirements for Professional Services Contracts

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: _____ Robert K. Stone Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Conduent Transport Solutions, Inc.</p> <hr/> <p>Michael M. Davis Senior Vice President 12410 Milestone Center Drive Suite 500 Germantown, MD 20876</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 vendor number: 0000025042</p>
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Appendices

- A. Scope of Work
- B. Calculation of Charges and Payment Form
- C. Task Order Request Form
- D. U.S. DOT Federal Requirements for Professional Services Contracts

Appendix A Scope of Work

1. Description of Work

Conduent shall provide the professional consulting and technical Work concerning functions, maintenance, testing, system performance, reliability and safety testing of the CAD/AVL provided by Conduent as a subcontractor under Radio System Replacement Project Design Build Work (Contract No. 1240, Document No: 00520: Build Design Agreement), dated March 29, 2012. Said CAD/AVL Work include CAD/AVL subsystems and components, OrbCAD software, ATCS interface, equipment embedded, server-based, and vehicle software, AVL track layer updates, and configuration of Central Subway (T-Line) on SFMTA provided CAD/AVL dispatch consoles, fixed end servers and data (collectively "Work"). Conduent shall provide the Work as requested by the SFMTA using Task Orders that state the scope of Work, basis of compensation (negotiated lump sum or time and materials) and value of the Work covered under the Task Order.

a) Project Management:

Conduent shall assist SFMTA in identifying major components, deliverables, and the effort required to provide integrations of new systems, new features and CAD/AVL functionalities.

Conduent shall identify activities of other SFMTA vendors whose participation may be required for a successful implementation of any defined request.

Based on a formal Statement of Work that defines the SFMTA requirements, the Conduent will modify its various software subsystems to enable features and functionalities that the SFMTA has specifically requested.

Conduent shall provide overall project management support and technical lead support in addition to the appropriate design and engineering support, as needed for a successful implementation.

Conduent shall adhere to SFMTA requirements for access to the various systems and areas when and as needed to fulfill contract requirements.

Conduent shall assist with supervision and directing the implementation and completion of all Contract Work

b) Design and Analysis Work:

Conduent shall provide engineering Work as requested by SFMTA to develop and validate software designs based on working sessions with SFMTA engineers and managers.

Conduent shall conduct formal design reviews including but not limited to: Intermediate Design Review and final design review.

c) Software development:

Conduent shall provide engineering Work to develop and validate necessary software additions and modifications to integrate into the existing systems; subsequently executing approved software changes.

Conduent shall review and make any changes necessary to the fixed end, update interfaces and associated databases and network/IP addresses.

Conduent shall review and make changes necessary to the vehicle software.

d) Performance Requirements:

Conduent shall meet the SFMTA defined system performance requirements:

- Vehicle location accuracy
- Vehicle stop announcement
- Voice and data communications performance
- Vehicle software
- Fixed end software performance queue

e) Support during revenue run provided on an as-needed basis

Conduent shall assume support and as-needed assistance during revenue run prior to final acceptance of close-out

f) Documentation and training

Conduent shall train SFMTA personnel interacting with the software on changes, new features and functionalities.

Conduent shall develop training materials and update any needed forms or reports impacted Provide enhancements to forms per the Agency's specifications.

Conduent will ensure that all as built, and subsequent design and operational documentation is appropriately updated and delivered to SFMTA upon completion of each initiative.

g) Specific deliverables will be identified in each task order

Examples of deliverable may include but are not limited to:

- Training Materials and SOP updates
- Enhancement to forms per Agency's specification
- Updated As-built and Operation and Maintenance Manual
- Completed Design Review

h) Schedule:

A detailed project and milestones schedule will be set out in each task order.

i) Testing and Validation:

Conduent shall conduct all required and necessary testing and subsequent validation for acceptance of delivery and revenue cutover.

- Factory testing
- Coverage testing
- Fixed end cutover
- Field performance testing
- Fleet testing
- Fleet cutover

j) Electronic Documents: All written Deliverables, including any copies, shall be submitted electronically.

2. Work Provided by Attorneys

Any Work 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 Work provided by law firms or

attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

3. Reports

Contractor shall submit written reports as requested by the SFMTA. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted electronically.

4. Department Liaison

In performing the Work provided for in this Agreement, Contractor's liaison with the SFMTA will be Zahra Afrookhteh.

Appendix B
Calculation of Charges and Payment Form

No invoices for Work 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.

Labor Classification	Hourly Rate	Labor Description
Mid-level Engineer	\$ 209.83	Software developers, Analysts, Field supervisors
Senior Engineer/ SME	\$ 265.60	DBA, Communication & Systems Engineer, System Architect, other SMEs
Support (Jr. Engineer)	\$ 179.58	Deployment engineer, IT support, data/documentation & training, Technical writer, field/vehicle technician, QA engineers
Program Manager	\$ 249.45	Program manager

PAYMENT FORM

SFMTA Contr. _____ AS-NEEDED PROFESSIONAL SERVICES		APPLICATION FOR PROGRESS PAYMENT						Application No. _____ Period Ending _____ Date Submitted _____ Task Order No. _____				
TASK NO.	DESCRIPTION OF APPROVED TASK ORDERS	Units	Unit Price	CONTRACT		PREVIOUS PERIOD		THIS PERIOD		TOTAL TO DATE		
				QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT	AMOUNT	% COMPLETE	
1	Project Plans-Submittal	MS	\$ -	1	\$ -		\$ -				\$ -	
	Project Plans-Approval		\$ -	1	\$ -		\$ -				\$ -	
2	Preliminary Design 1	MS	\$ -	1	\$ -		\$ -				\$ -	
	Preliminary Design I		\$ -	1	\$ -		\$ -				\$ -	
3	Final Design Documentation-Submittal	MS	\$ -	1	\$ -		\$ -				\$ -	
	Final Design Documentation-Acceptance		\$ -	1	\$ -		\$ -				\$ -	
4	Completion of Testing A	MS	\$ -	1	\$ -		\$ -				\$ -	
5	Completion of Testing B	MS	\$ -		\$ -		\$ -				\$ -	
5.1	100% Testing B1 Complete		\$ -	1	\$ -		\$ -		\$ -		\$ -	
5.2	100% Testing B2 Complete		\$ -	1	\$ -		\$ -		\$ -		\$ -	
5.3	Submission of Safety Letter		\$ -	1	\$ -		\$ -		\$ -		\$ -	
6	Completion Testing C	MS	\$ -		\$ -		\$ -		\$ -		\$ -	
6.1	100% Testing C1 Complete		\$ -	1	\$ -		\$ -		\$ -		\$ -	
6.2	100% of Testing C2 Complete		\$ -	1	\$ -		\$ -		\$ -		\$ -	
6.3	Submission of Safety Letter		\$ -	1	\$ -		\$ -		\$ -		\$ -	
7	Final Acceptance	MS	\$ -	1	\$ -		\$ -		\$ -		\$ -	
TOTAL BASE CONTRACT:						\$0.00	(DIVI)	\$0.00	(DIVI)	\$0.00	(DIVI)	\$ -
TOTAL CONTRACT MODIFICATIONS:												

INSURANCE STATUS (EXPIRATION DATES SHOWN):

I HEREBY CERTIFY that the above charges are actual and correct and are in accordance with the Terms and Conditions of the Agreement and said charges have not been previously submitted. I also certify that all subcontractors and suppliers who, whether directly to the Contractor or through intermediate subcontractors, performed work or supplied materials or equipment, payment for which was included in the previous progress payment received, have been paid all amounts due for all the work, materials, and equipment for which the Agency has so paid this Contractor. (PPA #1 through PPA #5)

Contractor: \$0.00

VENDOR'S PROJECT MANAGER

DATE

Appendix D

FTA REQUIREMENTS FOR PROFESSIONAL WORK CONTRACTS

Contractor shall comply with the following requirements of the Federal Transit Administration, which requirements are imposed on the SFMTA as a condition of grants funding the Work under this Contract.

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

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
- B. Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
 - C. **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*)

- 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*)

- 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 an 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. **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.

D. **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.

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 therefor 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. 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.

XIX. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Work 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 air 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.

XX. 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.

XXI. 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.

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.

B.

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

If providing Intelligent Transportation Systems (ITS) property or Work, Contractor 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.

XXIII. 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.

XXIV. 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.