

**THIS PRINT COVERS CALENDAR ITEM NO. 10.4**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Streets

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute as-needed Contract No. SFMTA-2022-69-FHWA with the San Francisco Bicycle Coalition Education Fund to provide as-needed management and implementation of San Francisco Safe Routes to School's (SF-SRTS) Education, Encouragement, and Experiential programming, collectively known as the SF-SRTS Non-Infrastructure Program, for an amount not to exceed \$5,000,000 and an initial term of two years, with an option to extend the term, at the SFMTA's sole discretion, up to a maximum of four years.

**SUMMARY:**

- In 2019, administration of the San Francisco Safe Routes to School (SF-SRTS) Non-Infrastructure Program transitioned from the San Francisco Department of Public Health to the SFMTA with funding and contracts in place through August 2021. These contracts were extended through June 2023.
- In May 2022, the San Francisco County Transportation Authority (SFCTA) Board approved adoption of the One Bay Area Grant (OBAG) Cycle 3 county framework, programming \$8,000,000 to the SF-SRTS Non-Infrastructure Program (Program), consisting of a Federal Highway Administration (FHWA) grant through the Metropolitan Transportation Commission (MTC), local tax revenues, and SFMTA operating funds.
- In December 2022, the SFMTA issued a Request for Proposals for qualified consultants to manage and implement the Program.
- In February 2023, the SFMTA received one responsive proposal from the San Francisco Bicycle Coalition Education Fund.
- The proposed Contract No. SFMTA-2022-69-FHWA provides as-needed management and implementation of the Program for an initial term of two years, with options to extend for a maximum term of four years and a total budget not to exceed \$5,000,000.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract No. SFMTA-2022-69-FHWA

**APPROVALS:**

DIRECTOR



**DATE**

May 10, 2023

SECRETARY



May 10, 2023

**ASSIGNED SFMTAB CALENDAR DATE:** May 16, 2023

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### **PURPOSE**

Authorizing the Director of Transportation to execute Contract No. SFMTA-2022-69-FHWA with the San Francisco Bicycle Coalition Education Fund to provide as-needed management and implementation of San Francisco Safe Routes to School's (SF-SRTS) Education, Encouragement, and Experiential programming, collectively known as the SF-SRTS Non-Infrastructure Program, for an amount not to exceed \$5,000,000 and an initial term of two years, with an option to extend the term, at the SFMTA's sole discretion, up to a maximum of four years.

### **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

The SF-SRTS Non-Infrastructure contract supports the following Strategic Plan goals:

- Goal 1: Identify and reduce disproportionate outcomes and resolve past harm towards marginalized communities
- Goal 4: Make streets safer for everyone
- Goal 6: Eliminate pollution and greenhouse gas emissions by increasing use of transit, walking and bicycling
- Goal 7: Build stronger relationships with stakeholders

The SF-SRTS Non-Infrastructure contract supports the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
6. Bicycling shall be promoted by encouraging safe streets for riding, convenient access to transit, bicycle lanes, and secure bicycle parking.
9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

The SF-SRTS Non-Infrastructure Program supports these goals and policy principles through providing education, encouragement, and direct support to San Francisco students and their families in choosing walking, bicycling, carpooling, and transit for trips to and from school.

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## **DESCRIPTION**

“Safe Routes to School” is an international initiative that has been active in the United States since the 1990s. The San Francisco Safe Routes to School (SF-SRTS) Program was first formed in 2009 as a partnership among the San Francisco Unified School District (SFUSD), the SFMTA, the San Francisco Police Department (SFPD), the San Francisco Department of the Environment, the San Francisco County Transportation Authority (SFCTA), the San Francisco Bicycle Coalition, and the Presidio YMCA.

Administration of SF-SRTS transitioned from the San Francisco Department of Public Health to the SFMTA in 2019, with funding and contracts in place through August 2021. The contracts were with four non-profit organizations: San Francisco Bicycle Coalition, Walk San Francisco Foundation, the YMCA of San Francisco, and the Tenderloin Community Benefit District.

In this period, SF-SRTS expanded from serving 27 elementary schools to reaching all 103 SFUSD public non-charter elementary, middle, and high schools with on-site outreach and education. Students and school communities were supported in walking, biking, and transit use through a variety of district-wide, neighborhood, and school-specific events and activities.

Key program activities included:

- Annual Walk & Roll to School Day
- Annual Bike & Roll to School Day
- In-school Bicycle PE classes
- Learn-to-Ride drop-in bicycle classes
- Staff-led Walking School Buses
- Increased coordination with related SFMTA teams and programs, including
  - Crossing guards
  - Engineering at and near schools
  - Muni Transportation Ambassadors Program
  - Free Muni for Youth
  - Tripper Buses serving middle and high schools
  - Youth Transportation Advisory Board

In September 2021, funding was secured through MTC’s Safe & Seamless Mobility Quick-Strike program (Quick-Strike) to continue the program for 15 additional months, and existing contracts were extended through July 2022.

On May 24, 2022, the SFCTA Board gave final approval to adopt the One Bay Area Grant (OBAG) Cycle 3 county framework and recommend programming \$7,082,400 to the Program which, along with \$917,600 in local matching funds, for a total of \$8,000,000, will continue the Program for an additional four years. Existing contracts were extended through June 30, 2023, for a total term of three years and ten months, to allow continuation of already scoped activities through the 2022-23 school year without interruption while a competitive process was initiated to secure a new contract for program activities.

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The SFMTA issued a Request for Proposals (RFP) to competitively secure a contract to manage and implement Program activities on December 6, 2022 and proposals were due by February 7, 2023. To reach a large pool of potential proposers and support the competitive bidding process, the SFMTA posted the RFP on the City's Bid and Contracts portal and on two national email lists for professionals working in the fields of transportation demand management and Safe Routes to School. The SFMTA also sent notice of the RFP to contacts at other City agencies with the request to share widely, and to organizations known to work on Safe Routes to School programs in San Francisco, Marin, and Alameda counties. The project team granted two requests for extensions to the proposal submission deadline to ensure that time constraints did not dissuade potential proposers and limit competitiveness. Despite the outreach, the SFMTA received just one proposal, from the San Francisco Bicycle Coalition Education Fund, which was found to meet minimum qualifications for the services requested.

The SFMTA and the San Francisco Bicycle Coalition Education Fund entered into negotiations in February 2023 and reached an agreement in April 2023.

The contract will have a Disadvantaged Business (DBE) goal of 21%.

The final contract includes the following subcontractors:

- Walk San Francisco Foundation (Walk SF)
- YMCA of San Francisco
- SF Transit Riders,
- Contigo Partners - DBE
- Intergraphics - DBE
- Cause IMPACTS - DBE

The San Francisco Bicycle Coalition and two of the subcontractors, Walk SF and the YMCA of San Francisco, are currently under contract with the SFMTA to provide Program activities through June 30, 2023.

## **STAKEHOLDER ENGAGEMENT**

Since 2019 when the SFMTA began administration of the Program, school communities in the City have consistently shown support of Program activities. School communities include students and their families, SFUSD central office staff, and school administration and faculty. Support of Program activities is reflected in surveys administered at schools and at the end of individual activities, participation numbers in annual events, and direct feedback to program staff and representatives. Feedback has included requests for more programming and for transportation-related support that is not provided by current Program activities. In these cases, Program activities are adjusted or added in response to the request when possible, or the request is forwarded to other programs as appropriate.

**ALTERNATIVES CONSIDERED**

The alternatives considered to meet Program needs were to provide services in-house, extend existing contracts, or rebid to secure a new contract for Program activities.

While City staff performs multiple roles in the SF-SRTS Program, current staff does not have sufficient time available or the range of expertise necessary to complete all program elements and contracted work is needed to supplement staff with specialized expertise. Skills needed include project management, program evaluation, graphic design, communications development and translation capability, as well as expertise delivering sustainable transportation trainings to schools, experience conducting outreach to school communities, including working with principals, teachers, administrative staff, district staff, parent–teacher associations/ organizations (PTAs/PTOs), parents/caregivers, and school-aged students. Some of these needs are only required on a periodic basis and most do not require full-time work. Furthermore, Contractor may be asked to provide equipment and space, such as bicycle training equipment, that the City lacks. Finally, as this program is grant-funded, future funding levels are uncertain, making hiring staff to civil service positions infeasible.

A rebidding process will also allow adjustments to be made to program structure. Replacing four contracts awarded to separate contractors with a single contract with subcontracts is expected to lower the administrative burden for the City and increase Program efficiency.

For these reasons, staff considers rebidding to secure a new contract through a competitive process is the best way to proceed.

**FUNDING IMPACT**

A grant of \$7,082,400 of federal (FHWA) funds through the OBAG Cycle 3 and \$917,600 of local match funds, for a total of \$8,000,000, will fund the Program for four years.

	<b>OBAG 3</b>	<b>Local Match: Operating Budget</b>	<b>Local Match: Prop L</b>	<b>Total</b>
FY23-24	\$1,770,600	\$229,400		\$2,000,000
FY24-25	\$1,770,600		\$229,400	\$2,000,000
FY25-26	\$1,770,600		\$229,400	\$2,000,000
FY26-27	\$1,770,600		\$229,400	\$2,000,000
Total	\$7,082,400	\$229,400	\$688,200	\$8,000,000

This grant was issued for the sole purpose of funding the Program and cannot be used for other programs or projects.

This item was not included in the current year budget, but funds for one year of local match totaling \$229,400 have been reallocated from SFMTA Sustainable Streets Parking Garage and Lot Operations budget.

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## **ENVIRONMENTAL REVIEW**

On March 10, 2023, the SFMTA, under authority delegated by the San Francisco Planning Department, determined that the proposed program and contract is not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

On August 1, 2022, under PSC # 48299-21/22, the Civil Service Commission approved contracting out for SRTS services through November 30, 2028.

The City Attorney’s Office has reviewed this report.

## **RECOMMENDATION**

Staff recommends that the SFMTA Board authorize the Director of Transportation to execute Contract SFMTA-2022-69-FHWA with the San Francisco Bicycle Coalition Education Fund to provide as-needed management and implementation of San Francisco Safe Routes to School’s (SF-SRTS) Education, Encouragement, and Experiential programming, collectively known as the SF-SRTS Non-Infrastructure Program, for an amount not to exceed \$5,000,000 and an initial term of two years, with an option to extend the term, at the SFMTA’s sole discretion, up to a maximum of four years.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, In 2019, the SFMTA took on administration of the San Francisco Safe Routes to School (SF-SRTS) program from the Department of Public Health; and

WHEREAS, On May 24, 2022, the San Francisco County Transportation Authority (SFCTA) Board gave final approval to adopt the One Bay Area Grant (OBAG) Cycle 3 county framework and recommended programming of \$7,082,400 and \$917,600 in local matching funds, for a total of \$8,000,000, to the SF-SRTS Non-Infrastructure Program (Program) to continue the Program for up to an additional four years; and

WHEREAS, In December 2022, the SFMTA issued a Request for Proposals for qualified consultants to manage and implement the Program; and,

WHEREAS, In February 2023, the SFMTA received one responsive proposal from the San Francisco Bicycle Coalition Education Fund (SFBCEF); and

WHEREAS, The parties have negotiated a contract to provide as-needed services for the Program for an amount not to exceed \$5,000,000, and an initial term of two years, with an option to extend the term, at the SFMTA's sole discretion, up to a maximum term of four years; and

WHEREAS, SFBCEF has agreed to achieve a disadvantaged business enterprises goal of 21%; and

WHEREAS, On March 10, 2023, the SFMTA, under authority delegated by the San Francisco Planning Department, determined that the proposed program and contract is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2022-69-FHWA with the San Francisco Bicycle Coalition Education Fund to provide as-needed management and implementation of San Francisco Safe Routes to School's (SF-SRTS)

Education, Encouragement, and Experiential programming, collectively known as the SF-SRTS Non-Infrastructure Program, for an amount not to exceed \$5,000,000 and an initial term of two years, with an option to extend the term, at the SFMTA's sole discretion, up to a maximum term of four years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of May 16, 2023.

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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., 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and**

**San Francisco Bicycle Coalition Education Fund**

**No. SFMTA-2022-69-FHWA**

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

**Agreement between the City and County of San Francisco and  
San Francisco Bicycle Coalition Education Fund**

**Contract No. SFMTA-2022-69-FHWA**

This Agreement is made as of \_\_\_\_\_, in the City and County of San Francisco (City), State of California, by and between the San Francisco Bicycle Coalition Education Fund (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

**A.** The SFMTA wishes to contract with Contractor for as-needed San Francisco Safe Routes to School's Education, Encouragement and Experiential programming (SF-SRTS Non-Infrastructure Program).

**B.** This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through Request for Proposals (RFP) No. SFMTA-2022-69-FHWA issued on December 6, 2022, pursuant to which City selected Contractor as the highest-qualified scorer.

**B.** The Disadvantaged Business Enterprise (DBE) subcontracting participation requirement for this Agreement is 25%.

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

**D.** The City's Civil Service Commission approved Contract number 48299-21/22 for this Agreement on August 1, 2022.

Now, THEREFORE, the parties agree as follows:

**Article 1      Definitions**

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

**1.1**      “**Acceptance**” means the formal written acceptance by the City that all Work, or a specific portion thereof, under the Contract has been satisfactorily completed.

**1.2**      “**Agreement**” or “**Contract**” means this contract document, including all attached appendices, any future amendments, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

**1.3** “**Award**” means notification from the City to Contractor of acceptance of Contractor’s Proposal, subject to the execution and approval of a satisfactory Contract and bond to secure the performance of the Contract, and to such other conditions as may be specified or otherwise required by law.

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

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

**1.6** “**City Data**” or “**Data**” means that data as described in Article 13 of this Agreement, which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement, as well as Confidential Information.

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

**1.8** “**Confidential Information**” means information and data that the SFMTA has identified as confidential or otherwise not to be released to the public without the express written authority of the SFMTA.

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

**1.10** “**Contract Modification**” means a written amendment to the Contract, agreed to by the City and Contractor, covering changes in the Conformed Contract Documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the Work affected by the changes.

**1.11** “**Contractor**” or “**Consultant**” means **San Francisco Bicycle Coalition Education Fund**.

**1.12** “**Controller**” means the Controller of the City.

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

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

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

**1.16** “**Disadvantaged Business Enterprise**” or “**DBE**” 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.

**1.17** “**Effective Date**” means the date the SFMTA notifies Contractor through a Purchase Order that the Controller has certified the availability of funds for this Agreement as provided in Section 3.1. In the case of a task order contract, the “Effective Date” means the date the Director executes the Contract.

**1.18** “**Federal Highway Administration (FHWA)**” is an operating administration of the U.S. Department of Transportation.

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

**1.20** “**Notice to Proceed**” means written notice to the Contractor of the date on which it shall begin prosecution of the Work to be done under the Contract.

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

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

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

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

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

**1.26** “**Subconsultant**” or “**Subcontractor**” means any firm under contract to the Contractor for services under this Agreement.



**1.27 “Task Order”** means a written directive from the SFMTA to the Contractor to perform specified work.

## **Article 2 Term of the Agreement**

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

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

## **Article 3 Financial Matters**

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

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

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

**3.3 Compensation.** The SFMTA will pay Contractor on a task-order basis for Services it performs under this Agreement.

**3.3.1 Amount.** Contractor's compensation for the Services it performs under Task Orders shall be based on either:

(a) a negotiated lump-sum price (that includes all direct hourly labor rates, overhead, profit, and all other costs) for the Task Order; or

(b) a negotiated number of hours per Task Order (using the hourly labor rates set forth in Appendix B (Calculation of Charges) plus a fixed profit and, if applicable, Subcontractor mark-up negotiated in accordance with Appendix B, subject to a total not to exceed amount. In no event shall the amount of this Agreement exceed Five Million Dollars (\$5,000,000).

**3.3.2 Method of Computing Compensation.** Contractor's compensation for Task Orders based on a negotiated number of hours shall be as described below.

(a) **Direct Hourly Labor Rates.** The direct hourly labor rates in Appendix B shall be fixed at that level until 12 months after the award date of this Agreement. Thereafter, during the term of this Agreement, Contractor may request to escalate these rates based on the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U). Contractor must request any escalation of these direct hourly labor rates no later than 30 Days before the anniversary of the award date of this Agreement, and failure to timely do so may result in a denial of the request. Any requests for escalation of directly hourly labor rates must include evidence of the change in the CPI-U. The SFMTA will review all requests for escalation of fees within 30 Days of receipt and notify Contractor of either an approval or denial. If approved, the new rates will become effective on the anniversary of the award date of this Agreement. In no event will the start of the new rates be backdated unless it can be shown that there was a delay on the part of the SFMTA in reviewing the request for escalation of rates. The direct hourly labor rates may not be increased without prior written approval of the SFMTA and will be Effective once a Contract Modification is executed.

(b) **Overhead Rates**

(i) The overhead rates in Appendix B shall be fixed at that level until 12 months after the date of award of this Agreement. Thereafter, during the term of this Agreement, Contractor may request to escalate these rates in accordance with the escalation-request process for direct hourly labor rates, described above. The Contractor's and Subcontractors' overhead rates are subject to audit in compliance with Federal requirements.

(ii) The overhead rates in Appendix B, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within 180 days of the end of Contractor's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Contractor shall submit to the Project Manager Contractor's and all Subcontractors' actual rates during the term of this Agreement. For each rate paid to the Contractor that exceeds the Contractor's or any Subcontractor's actual rate, the Contractor shall reimburse to the City the total difference between the rate paid and Contractor's or Subcontractor's actual rate during the term of this Agreement. Contractor shall reimburse City within 30 days of written notice from City seeking reimbursement. For each actual overhead rate of Contractor or Subcontractor that exceeds the rate paid to Contractor, City shall pay to Contractor the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Contractor within 60 days of City's receipt of all of Contractor's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Contractor's rates as provided above.

(c) **Reimbursable Costs.** This Agreement is subject to federal regulations concerning the reimbursement and audit of expenses, costs, and overhead as set forth in "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200 (Federal Cost Requirements). The Contractor acknowledges that it is familiar with the Federal Cost Requirements. Contractor shall not seek reimbursement and the City shall not pay reimbursement to Contractor for costs (including but not limited to direct costs, indirect costs, and overhead) that are not compensable under the Federal Cost Requirements. Contractor understands and acknowledges that the City shall not reimburse Contractor for Contractor's costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments to Contractor under this Agreement are subject to audit and adjustment in accordance with the requirements and standards set out in the Federal Cost Requirements.

(d) **Out-of-Pocket Expenses.** The SFMTA will reimburse Contractor for the actual cost of approved out-of-pocket expenses for the prime Contractor and Subcontractors. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All expenses required to perform a task must be described in detail in the Task Order scope of work and identified as a line item in the Task Order budget. If unforeseen expenses are required to perform the Task Order scope of work after the Task Order has been issued as a Purchase Order, such costs must be documented in detail and pre-approved in writing by the SFMTA. All travel expenses are to be pre-approved by the SFMTA, and Contractor must obtain the best air fare available in a timely fashion. Receipts for all expenses must accompany the invoice.

(e) **Non-Reimbursable Expenses.** The SFMTA will not reimburse the Proposer for any of the following expenses:

- (i) Consultant and Subconsultants' personnel relocation costs
- (ii) Purchases of office and field supplies/equipment, unless the supplies/equipment are not ordinary/typical supplies and equipment AND uniquely required of this Project AND serving only this Project, in which case the costs shall be separately identified in the Cost Proposal. These items will then need to be turned over to the SFMTA at the end of the Contract
- (iii) Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable unless otherwise approved by the SFMTA in advance as being necessary (e.g., no viable public transit options available)
- (iv) Any travel expenses, including transportation, meals, and lodging costs that are not approved by the SFMTA
- (v) Any overnight courier services extending outside of the Bay Area between Proposer offices except as approved by the SFMTA
- (vi) Any personal or entertainment expenses
- (vii) Computer usage
- (viii) Facsimile and telecommunications expenses.

(f) **Use of Public Transportation.** San Francisco is a transit-first city, and the SFMTA encourages Contractor and Subcontractors to use public transit in performance of its services to the maximum extent possible. The SFMTA will closely review the Contractor's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Hired cars are not considered public transit. The City reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

**3.4 Calculation of Charges.** For Task Orders based on a negotiated number of hours, Contractor shall provide an invoice to the SFMTA on a monthly basis for Services (including goods delivered, if any) completed in the immediately preceding month, unless a different schedule is set out in Appendix B (Calculation of Charges). For Task Orders based on a lump-sum price, Contractor shall provide an invoice to the SFMTA as a one-time lump sum amount upon completion of the Task Order, or a percentage or dollar amount per milestone each month, in either case as defined in the Task Order. Compensation shall be made for goods and/or Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes have been satisfactorily performed. The City may withhold a portion of payment as retention until the conclusion of the Agreement if agreed to by both Parties. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

### **3.4.1 Payment Limited to Satisfactory Services and Delivery of Goods .**

Contractor is not entitled to any payments from City until the SFMTA approves the goods and/or Services, including any furnished Deliverables delivered under this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials or other goods and/or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, goods or Services may not have been apparent or detected at the time such payment was made. The City may reject Deliverables, equipment, components, materials, goods and/or Services delivered under this Agreement that do not conform to the requirements of this Agreement. In such case, Contractor must replace the non-conforming Deliverables, equipment, components, materials, goods and/or Services without delay and at no cost to the City.

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

**3.4.3 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the City's Controller and the SFMTA, and must include a unique invoice number. Contractor shall submit invoices for all allowable charges incurred in the performance of each Task Order. No more than one invoice shall be submitted per Task Order in a month. Each Contractor invoice shall contain the following information:

- (a) Contract Number
- (b) Task Order Number
- (c) Purchase Order Number for the Task Order
- (d) A copy of the receipts for all expenses invoiced
- (e) PeopleSoft Supplier Name and ID
- (f) Description of the Services performed and/or goods delivered
- (g) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced except where Contractor invoices for a deliverable that is priced in the Task Order as a lump sum, or as estimated milestone payments described in the Task Order budget
- (h) Other direct costs
- (i) Subcontractor costs supported by invoice itemization in the same format as described here
- (j) Profit for current invoice period. Profit will be calculated as a prorated portion of the total profit for the task for which Contractor seeks payment. Profit will be for an amount not to exceed seven percent of the total Contract value
- (k) Total mark-up for current invoice period for all Subcontractor's

work effort for that invoice period as an amount not to exceed three percent of Subcontractor's total labor charges

- (l) Contract payment terms
- (m) Sales/use tax (if applicable)
- (n) Total costs
- (o) Progress Payment Form – SFMTA Form No. 6

#### **3.4.4 Payment Terms**

(a) **Payment Due Date:** Unless the SFMTA notifies the Contractor that a dispute exists, Payment will be made within 30 Days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted the electronic payment to Contractor.

(b) **Reserved. (Payment Discount Terms)**

**3.4.5 Progress Payment Form.** The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the SFMTA Progress Payment Form (SFMTA Form No. 6). If the Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA and Contractor of the omission. If Contractor's failure to provide the SFMTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20 percent of the payment due pursuant to that invoice until the SFMTA Progress Payment Form is provided.

**3.4.6 DBE Payment and Utilization Tracking System.** Contractor shall pay DBE subcontractors within three business days. Within ten business days of the SFMTA's payment of an invoice, Contractor shall confirm that all subcontractors have been paid via the B2GNow System (<https://sfmta.diversitycompliance.com/>). Failure to submit all required payment information to the City's Financial System with each payment request may result in the withholding of 20% of the payment due. Additionally, Contractor shall submit Exhibit 9-F (Disadvantaged Business Enterprise (DBE) Running Tally of Payments) by email to Business.Support.Unit@dot.ca.gov, with a copy to the SFMTA Contract Compliance Office no later than the 10<sup>th</sup> of the following month, after submitting an invoice for reimbursement that includes the costs of a DBE.

#### **3.4.7 Getting Paid by the City Payment for Goods and/or Services**

(a) The City utilizes the Paymode-X<sup>®</sup> service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [http://portal.paymode.com/city\\_countyofsanfrancisco](http://portal.paymode.com/city_countyofsanfrancisco).

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through [sfemployeeportalsupport@sfgov.org](mailto:sfemployeeportalsupport@sfgov.org).

### 3.4.8 Grant-Funded Contracts

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

(b) **Grant Terms.** The funding for this Agreement is provided to the SFMTA in full or in part by a Federal or State grant. As part of the terms of receiving the funds, the SFMTA must incorporate some of the terms into this Agreement (Grant Terms). The incorporated Grant Terms may be found in Appendix D (FHWA Requirements For Personal Services Contracts). To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Terms and the other provision(s), the Grant Terms shall apply.

(c) **Subcontractors.** As required by the Grant Terms, Contractor shall insert applicable provisions into each lower-tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

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

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

**3.7 Reserved. (Payment of Prevailing Wages)**

**Article 4 Services and Resources**

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

**4.2 Task Order Requirements.** Contractor shall perform the Services under Task Orders the SFMTA issues in accordance with the process described below. The SFMTA will define requirements for Task Orders. The scope of work, 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. The cost of preparing invoices, including required SBE/DBE forms, and the Contractor proposal must be incorporated into the overhead rate (as approved in Appendix B). Additionally, project management costs may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, a task monitoring system (e.g., bi-weekly project reports or monthly status updates).

**4.2.1 Task Order Request.** The SFMTA will provide Contractor a Task Order request, using the form in Appendix C, that includes the following: (a) the scope of Services, including any deliverables; (b) the deadline to respond to the Task Order request (i.e., deadline to prepare and submit Task Order proposal); and (c) the expected timeline (including any milestones) to complete the task.



**4.2.2 Contractor Request for Information.** Upon receiving a Task Order Request Form, Contractor shall request in writing any information or data it requires to complete the proposal and perform the Services under the Task Order. The Parties will reach agreement as to the availability and delivery time for this data and information during initial task negotiations.

**4.2.3 Contractor Proposal.** By no later than the deadline set forth in the Task Order request, Contractor shall prepare and submit to the SFMTA a Task Order proposal that includes, at minimum, the following items:

(a) A work plan that includes the following: (i) a detailed description, by task, and, if applicable, subtask of the scope of Services to be performed under the Task Order; (ii) Contractor's approach to perform the Services and complete the Task Order; and (iii) any information or data Contractor requires to perform the Task Order.

(b) A schedule to complete the Task Order, including key milestone dates to complete each task, subtask, and deliverable, as applicable.

(c) A list of personnel and Subcontractors Contractor proposes to work on each Task Order; and, for each personnel and Subcontractor, a description of the task(s) or subtask(s) they will perform, and a resume indicating the personnel or Subcontractor is qualified to perform that work. Resumes shall describe experience performing similar work.

(d) A detailed cost estimate for each task, subtask or deliverable showing:

(i) Estimated number of hours and fully burdened hourly labor rates (as listed in Appendix B) for each personnel and Subcontractor proposed to work on the Task Order. The following labor costs are not allowed, and shall not be included in Contractor's cost estimates: labor to prepare monthly invoices, labor to fill out required DBE forms, and labor to manage Subcontractors.

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

(iii) Proposed profit and mark-up, as follows:

- Proposed profit of Contractor's work effort as a fixed fee amount not to exceed seven percent of Contractor's estimated direct hourly labor rates and overhead costs; and
- For work performed by all Subcontractors, proposed total mark-up for Contractor on Subcontractor's work effort as a fixed fee not to exceed three percent of

Subcontractor's total labor charges (does not include Other Direct Costs (ODCs)).

**4.2.4 Negotiation of Cost and Profit.** The SFMTA Project Manager will review the Task Order proposal and negotiate with Contractor pricing for the Task Order, which shall be either a lump-sum price or actual direct costs plus a negotiated fixed overhead and profit subject to a payment cap to perform the task.

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

**4.2.6 Subcontracting Goals.** Upon completion of negotiations, Contractor shall provide Project Manager a memo describing the proposed DBE goal associated with the Task Order. The memo shall include a table that lists (1) all firms performing work on the Task Order, (2) if the firm is a DBE, (3) the dollar value and percentage of work attributed with each firm, and (4) the overall calculated DBE goal for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's DBE goal memo, approve or deny the goal, and issue a memo to file. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in the Agreement.

**4.2.7 Notice to Proceed.** The SFMTA will issue and send to Contractor a written notice to proceed (NTP), Task Order number, and Purchase Order after verifying that sufficient funds are available to pay for the Task Order. Contractor shall not commence work under any Task Order until it receives a corresponding NTP and Purchase Order from the SFMTA. Proposer shall use this Task Order number when submitting invoices to the SFMTA's project manager for payment under the Task Order.

**4.2.8 Changes to Task Order Pricing.** Task Order pricing shall not be modified unless there is a material change in the Task Order's scope of Services, in which case a new Task Order proposal, pricing negotiation, record of negotiations, and notice to proceed shall be required before SFMTA approves the change in pricing.

**4.2.9 Failure to Agree on Terms of Task Order.** In the event that the SFMTA and Contractor cannot reach agreement on the terms of the Task Order, the SFMTA may either cancel the Task Order and have the work accomplished through other available sources, or may direct the Contractor to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Contractor refuse to undertake a City-ordered task.

**4.2.10 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.

### **4.3 Personnel**

**4.3.1 Qualified Personnel.** Contractor shall use only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

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

**4.4 Current Workload and Available Resources.** The Contractor covenants that its current workload and the workload of its Subcontractors will not affect the commencement and the progress of the work under this Agreement. The Contractor shall have all the necessary professional, technical and support personnel, including those of the Subcontractors, available, ready and mobilized to perform actual work within two weeks of the receipt of NTP on a particular task. In addition, the 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.

**4.5 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 Subcontractors' 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.

**4.6 Agency's Responsibilities Regarding Submittals.** The Agency will review and comment on Contractor's submittals generally within two calendar weeks of submittal. 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 in subsection 4.2.3 above.

#### **4.7 Subcontracting**

**4.7.1** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

**4.7.2** City's execution of this Agreement constitutes its approval of the Subcontractors listed below.

Cause IMPACTS

Contigo Communications

Intergraphics

San Francisco Transit Riders

Walk San Francisco Foundation

YMCA of San Francisco

#### **4.8 Independent Contractor; Payment of Employment Taxes and Other Expenses**

**4.8.1 Independent Contractor.** For the purposes of this Section 4.8, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health

or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.8.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.8 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

**4.9 Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement nor any duties or obligations hereunder may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or where the Contractor is a joint venture, a joint venture partner (collectively referred to as an “Assignment”), unless first approved by City by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. The City’s approval of any such Assignment is subject to the Contractor demonstrating to City’s reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor’s obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with City; and (c) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

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

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance**

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

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. Policy must include Abuse and Molestation coverage.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers’ Compensation, in statutory amounts, with Employers’ Liability Limits not less than \$1,000,000 each accident, injury, or illness.

- (d) Reserved. (Professional Liability Coverage)
- (e) Reserved. (Technology Errors and Omissions Coverage)
- (f) Reserved. (Cyber and Privacy Coverage)
- (g) Reserved. (Pollution Liability Insurance)

### **5.1.2 Additional Insured Endorsements**

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement)

### **5.1.3 Waiver of Subrogation Endorsements**

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

### **5.1.4 Primary Insurance Endorsements**

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

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

(c) Reserved. (Pollution Liability Insurance Primary Insurance Endorsement)

### **5.1.5 Other Insurance Requirements**

(a) Thirty days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment, for which no less than 10 Days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

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

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

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

(f) If Contractor will use any Subcontractor(s) to provide Services, Contractor shall require the Subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations;



(iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to Subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its Subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, Contractors and experts and related costs and City's costs of investigating any claims against the City.

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

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

## **Article 6      Liability of the Parties**

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

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

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

## **Article 7 Payment of Taxes**

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

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

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

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

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

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

**7.3 Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

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

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

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

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

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

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

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

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

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

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services the SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of the SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to the SFMTA, and any other appropriate credits to the SFMTA against the cost of the Services or other work.

**8.1.4 Nonrecoverable Costs.** 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 listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

**8.1.5 Deductions.** In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Services covered by Contractor's final invoice; (ii) any claim which the SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded

pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and the SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

## **8.2 Termination for Default; Remedies**

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

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

3.5	Submitting False Claims
4.9	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.10	Alcohol and Drug-Free Workplace
10.13	Working with Minors
11.10	Compliance with Laws
Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within 10 days after written notice thereof from the SFMTA to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, the SFMTA may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

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

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

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

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

**8.2.4** Any notice of default must be sent to the address set forth in Article 11, and in the manner prescribed in Article 11.

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

#### **8.4 Rights and Duties upon Termination or Expiration**

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

3.4.1 Payment Limited to Satisfactory Services and Delivery of

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

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

## **Article 9      Rights in Deliverables**

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

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

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

## **Article 10 Additional Requirements Incorporated by Reference**

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

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

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

**10.4 Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is



required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

## **10.5 Nondiscrimination Requirements**

**10.5.1 Nondiscrimination 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 Disadvantaged Business Enterprise Program**

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

**10.6.2 Compliance with DBE Program.** Contractor shall comply with the DBE provisions contained in Appendix E attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the DBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Contractor to comply with any of these requirements shall be deemed a material breach of this Agreement.

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

**10.7 Minimum Compensation Ordinance.** The SFMTA encourages Contractor to pay its employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>.

**10.8 Health Care Accountability Ordinance.** The SFMTA encourages Contractor to comply with the requirements of Administrative Code Chapter 12Q. Information about and the text of Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>.

**10.9 Reserved. (First Source Hiring Program).**

**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 its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (a) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (b) a candidate for that City elective office, or (c) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party

to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any Subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

#### **10.12 Reserved. (Slavery Era Disclosure)**

**10.13 Working with Minors.** In accordance with California Public Resources Code Section 5164, if Contractor, or any Subcontractor, is providing services at a City park, playground, recreational center or beach, Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Contractor, or any Subcontractor, is providing services to the City involving the supervision or discipline of minors or where Contractor, or any Subcontractor, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Contractor and any Subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this Section and Section 10.14 (Consideration of Criminal History in Hiring and Employment Decisions) of this Agreement, this Section shall control.

#### **10.14 Consideration of Criminal History in Hiring and Employment Decisions**

**10.14.1** Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

**10.14.2** The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the

employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Reserved. (Public Access to Nonprofit Records and Meetings)**

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.17 Reserved. (Distribution of Beverages and Water)**

**10.18 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**10.19 Reserved. (Preservative-Treated Wood Products)**

**Article 11 General Provisions**

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

To City: Crysta Highfield  
Program Coordinator  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
[Crysta.Highfield@sfmta.com](mailto:Crysta.Highfield@sfmta.com)

To Contractor: Christopher White  
Deputy Director  
San Francisco Bicycle Coalition  
1720 Market Street  
San Francisco, CA 94102  
[christopher@sfbike.org](mailto:christopher@sfbike.org)  
415-295-2355

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

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

**11.3 Incorporation of Recitals.** The Recitals are incorporated into and made part of this Agreement.

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

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

## **11.6 Dispute Resolution Procedure**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

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

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

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

**11.9 Entire Agreement.** This Contract sets forth the entire agreement between the Parties, and supersedes all other oral or written provisions. All appendices to this Agreement are incorporated by reference as though fully set forth. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

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

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

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

**11.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing Task Orders, the

RFP, and Contractor's proposal dated [Insert Date of Proposal]. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, and any implementing Task Orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

## **Article 12 SFMTA Specific Terms**

### **12.1 Large Vehicle Driver Safety Training Requirements**

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

**12.1.2** By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or Subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the

time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

## **Article 13 Data and Security**

### **13.1 Nondisclosure of Private, Proprietary or Confidential Information**

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

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

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

### **13.3 Reserved. (Business Associate Agreement)**

**13.4 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

### **13.5 Management of City Data and Confidential Information**

**13.5.1 Access to City Data.** City shall at all times have access to and control of City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

**13.5.2 Use of City Data and Confidential Information.** Contractor agrees to hold City Data received from, or collected on behalf of the City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City Data outside the United States is subject to prior written authorization by the City. Access to City



Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, Subcontractors, or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

**13.5.3 Disposition of Confidential Information.** Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than 30 Days, return all Data given to or collected by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall within 10 Days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors' environment(s), work stations that were used to process the Data or for production of the Data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five Days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88, or the most current industry standard.

## **Article 14 MacBride and Signature**

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

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

<p><b>CITY</b></p> <p><b>San Francisco Municipal Transportation Agency</b></p> <hr/> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p><b>San Francisco Bicycle Coalition Education Fund</b></p> <hr/> <p>Janelle Wong Executive Director 1720 Market Street San Francisco, CA 94102</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000011626</p>
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**Appendices**

- A.1: Scope of Services
- A.2: Community Based Organization Subcontracts Criteria and Procedure
- B: Calculation of Charges
- C: Task Order Request Form
- D: FHWA Requirements for Personal Services Contracts

## **Appendix A Scope of Services**

The SFMTA will issue task orders for all services described below in accordance with Section 4.2 of the Agreement.

### **I. Description of Services**

Contractor agrees to perform the following Services:

#### **1. Project Management**

Contractor will provide one designated Project Manager to serve as the primary liaison with the SFMTA Project Manager, manage directly staffed or subcontracted teams, coordinate meetings, and oversee budgeting, invoicing, reporting, and evaluation.

*Deliverable 1: Monthly Summary Reports of project management activities reflecting work completed as specified in task order, to be submitted with Contractor invoices. Summary Report format and content requirements will be defined in each Task Order.*

#### **A. Management and Coordination of Contractor and Subcontractor Teams:**

Contractor will develop systems and protocols of collaboration across teams to be approved by the SFMTA, and be responsible for ensuring consistent use of systems and protocols by all Contractor and subcontractor program staff. Protocols will include timelines to which all program teams, including Contractor and SFMTA, will agree to adhere.

*Deliverable A1: Program Systems and Protocols, developed by the Contractor and approved by the SFMTA, which establish procedures and requirements for recurring program actions that require collaboration, information exchange, or review and approval among the SFMTA, Contractor, and subcontractor teams. An initial set of program systems and protocols will be submitted within two months of Contract initiation and include procedures for sharing and storing meeting agendas and notes, logging and updating data on purchases, school assessments and implemented program activities and events, and SFMTA review and approval of communication and promotional material, incentives, purchases, and program activity materials. At Contractor or SFMTA request, new protocols may be added or existing protocols updated for SFMTA approval. Program systems and protocols will be maintained in a technology platform or file*

*system approved by the SFMTA and to which the SFMTA has full access.*

- B. Onboarding and Training:** Contractor will onboard staff and provide training as needed to ensure that program systems and protocols are clear and understood by all parties and program staff maintain the skills and capacities necessary to successfully carry out their responsibilities under this Contract.

***Deliverable B1:** Quarterly Training Plan, proposed by Contractor and approved by the SFMTA, summarizing training timelines and expected outcomes.*

***Deliverable B2:** Onboarding and Training Materials, provided by Contractor and approved by SFMTA prior to use in onboarding or training.*

***Deliverable B3:** Monthly Summary Reports of training activities including attendance and knowledge, or skills trained. Summary Report format and content requirements will be defined in each Task Order.*

- C. Meeting Plans and Facilitation:** Contractor will facilitate meetings and communication between subcontractors, SFMTA, and SFUSD, to ensure focused, efficient, and productive execution of the program.

***Deliverable C1:** Meeting Schedule, briefly describing cadence, purpose, and expected attendance of regular meetings between Contractor, the SFMTA, and subcontractors proposed by Contractor upon approval of Implementation Plan for inclusion in each Task Order and updated quarterly.*

***Deliverable C2:** Meeting Agendas, prepared by Contractor or its delegate and made available prior to meetings following protocols established through Project Management Deliverable A1. Copies of meeting agendas will be stored in a technology platform or file system approved by the SFMTA and to which the SFMTA has full access.*

***Deliverable C3:** Meeting Notes, prepared by Contractor or its delegate and maintained in a technology platform or file system approved by the SFMTA and to which the SFMTA has full access, updated following protocols established through Project Management Deliverable A1.*

- D. Strategic Plans:** The SFMTA and Contractor, working in collaboration with SFUSD, will develop an outreach, engagement and implementation strategy for each six-month period during the Contract. Strategies must be approved by the SFMTA and informed by school liaison assessments, evaluation team recommendations, and other considerations. Approved plans should identify SFUSD and citywide strategies, individual school needs, and appropriate program tasks to address needs and recommendations on prioritizing where limited program resources will be focused.

***Deliverable D1:** Strategic Plan consisting of SFUSD, citywide and focus-school-specific strategic recommendations to be completed and approved twice a year, no later than mid-September and mid-March to allow for development of implementation task orders. The SFMTA will provide comments within one week of receipt of the proposed plan.*

- E. Semi-annual Implementation Plans:** Based on approved strategic plans and input from the SFMTA and SFUSD, Contractor will develop an implementation plan for SFMTA approval that identifies specific activities for each focus school, as well as any SFUSD and citywide activities.

***Deliverable E1:** Implementation Plan, to be approved by the end of each March and October (for the following 6-12-month period). Two weeks for approval and negotiation should be provided to ensure compliance with deadlines. The SFMTA will provide comments within one week of receipt of the proposed plan.*

***Deliverable E2:** Proposed task orders, submitted by Contractor upon approval of the Implementation Plan, for a minimum of 6 months of implementation activities, plus an additional 6-month continuation period with the same work level to avoid work-stoppages/payment issues. For Contract years three and four, task orders will be issued for 12 months, plus an additional 6-month continuation period with the same work level to avoid work-stoppages/payment issues Contractor should expect that task orders will be amended at the end of the initial 6-month period during Contract years 1 and 2, and at the end of the 12-month period at the end of years 3 and 4. The first task order(s) initiating work under the Contract will be agreed on within 10 days of Contract execution, prior to development of strategic and implementation plans.*

***Optional Deliverable E3:** If identified as needed, additional task orders will be developed and agreed upon in support of tasks outside of the Implementation Plan.*

## **2. Communications**

Develop and support implementation of a communication strategy to support program goals, increase school and public awareness of the SRTS program and its activities, reinforce the SF-SRTS brand identity, and integrate gathering of metrics in line with the approved evaluation plan. Communication activities will be directed by the SFMTA in consultation with SFUSD and Contractor.

- A. Communications Strategy Development:** The SFMTA and designated communications staff, in consultation with SFUSD and Contractor, will develop a communication strategy that supports program goals and approved strategic plans.

The communication strategy should include approaches to increase public awareness of SF-SRTS offerings, activities and events, identify distinct target audiences and techniques to reach each audience with effective messaging, and recommendations of actions to be taken by the SFMTA, SFUSD, and Contract team in support of communications goals. As part of the communications strategy, the SFMTA, in consultation with Contractor, will work with communications staff to refine SF-SRTS brand guidelines, including use of program logo, hashtags and program name, consistent expression of program identity by all program staff, including but not limited to job titles, verbal introductions, email signature blocks and wearable branded assets, and recognition of the SFMTA as the program administrator.

***Deliverable A1:** Communications Strategy Brief summarizing the communications strategy developed by the SFMTA and designated communications staff, to be completed and approved within two months of initiation of the first task order and updated once a year by the beginning of July.*

***Deliverable A2:** Brand Guidelines Brief, to be completed and approved once within two months of initiation of the first task order and updated as needed at the request of the SFMTA in consultation with Contractor.*

**B. Communications Implementation:** In alignment with the approved Communications Strategy Brief, activities authorized in task orders may include but are not limited to:

1. Culturally responsive, multi-lingual in-person outreach at neighborhood and citywide events
2. Culturally responsive, multi-lingual in-person outreach and programmatic activity support at prioritized schools
3. Regular updates and maintenance of the SF-SFRTS website
4. Creation of copy and visual elements for print and digital communications assets such as:
  - Customizable templates
  - Resources such as fact sheets and activity toolkits
  - Newsletters, blog posts, and social media
5. Execution of digital and print media buys, in alignment with Purchasing and Communications Plans
6. Maintenance of email contact list

***Deliverable B1:** Quarterly Communications Plan. Provide a quarterly*

*communications plan, including monthly communications goals, a calendar of media, social media, direct school and other communications activities, as well as a plan for meeting ad hoc and opportunistic communications needs during the quarter.*

***Deliverable B2:** Monthly Summary Reports of communication activities, including dates and locations of events and activities attended, language support provided, populations targeted, and metrics on individuals engaged and activity effectiveness in line with approved evaluation strategy, to be submitted with Contractor invoices. Summary Report format and content requirements will be defined in each Task Order.*

***Deliverable B3:** Copies of print and digital communications assets and branded incentives and program assets, reviewed and approved by the SFMTA following protocols established through Project Management Deliverable A1.*

### **3. School Assessment and Engagement**

Build and maintain relationships within prioritized school communities. Assess school transportation needs and opportunities on an ongoing basis in order to effectively match program offerings to school needs, priorities and capacities. Cultivate robust and sustainable school community engagement. To equitably serve San Francisco's diverse student and family population, SF-SRTS engagement will be supported by a multi-lingual, culturally responsive team.

**A. School Assessment and Engagement Implementation:** A minimum of 2.0 FTE will be devoted to school assessment and engagement activities, carried out by designated staff (School Liaisons). School Liaisons will be responsible for assessment and engagement activities at a set of focus schools approved by the SFMTA, with specific schools assigned to each School Liaison decided by the Contractor. Unless necessary for relationship building or approved by the SFMTA, School Liaisons' time will not be spent on implementation of program classes, activities, or events, or on communications targeting populations outside of their assigned schools. In alignment with the approved strategic and implementation plans, activities authorized in task orders may include, but are not limited to the following:

1. Build and maintain relationships with school staff, families, and community members through attending school and community meetings such as PTA/PTO, principal chats, English Learners Advisory Committees (ELAC), after-school program events, and back-to-school backpack giveaway events to

engage with school staff and families and learn more about school community needs and priorities.

2. Regularly communicate with school staff, families, and community members through in-person conversations, phone calls, and email.
3. Assess school receptiveness and barriers to program offerings and transportation choices.
  - Gather feedback on school trip transportation choices and understand the current landscape of school trips at prioritized focus schools;
  - Identify opportunities and challenges in the environment surrounding the school that impact transportation choices;
  - Build understanding of school needs, priorities, and capacities and how they affect transportation choices and shape school receptiveness to programming;
  - Collect data to support findings and recommendations and document school and community feedback.
4. Develop recommendations for SF-SRTS events, classes and activities that are most likely to make incremental progress towards strategic and programmatic goals and ultimately improve student safety and result in mode shift towards Four Fun Ways.
5. Work with the SFMTA, Contractor, and SFUSD to determine if a new event, class or activity offering will be developed when standard SF-SRTS offerings are determined to not meet the needs or engage the students, families, or staff of a school.
6. Identify and cultivate transportation champions among school staff, families and community members.
7. Connect school staff, families, and community members with Implementation Team for planning, organization, and implementation of recommended or requested classes, activities and events.
8. Follow up with school contacts after events, classes and activities.
9. Regularly update school assessments and recommendations.

***Deliverable A1:** Monthly Summary Reports of assessment and engagement activities reflecting an amount of work appropriate for 2.0 FTE, in line with approved Implementation Plan, to be submitted with Contractor invoices. Summary Report format and content requirements will be defined in each task order.*

***Deliverable A2:** Record of school contacts, assessments and recommendations, maintained in a technology platform or file system approved by the SFMTA and to which the SFMTA has full access, updated following protocols established through Project Management Deliverable A1.*

#### **4. Program Activity Implementation**



Plan, organize, promote, and conduct a mix of events, classes, and activities to improve safety and support students and families in choosing to use the Four Fun Ways on trips to and from school in accordance with approved strategic and implementation plans. Events, classes, and activities will be scheduled as directed by the Contractor in response to School Liaison assessments of school needs and opportunities and be implemented by on-call teams with expertise in pedestrian safety, urban bicycling, transit use, and environmental safety.

**A. Events, Classes and Activities:** Events, classes, and activities will provide education, encouragement, and practical experience on at least one of the following modes or topics:

1. Bicycling
2. Walking
3. Transit use
4. Carpooling
5. Environmental Safety

Contractor will implement SF-SRTS's annual Bike & Roll to School Event each Spring and Walk & Roll to School Event each Fall, encouraging students at all 103 SFUSD public non-charter schools to use active transportation to school and celebrating those who do with engaging activities and incentives. Contractor will also implement SF-SRTS's Transit Day, targeted primarily at middle and high school students.

Programming that will be available for offer at select schools in the first year of the Contract:

1. Annual Bike & Roll to School Event
2. Annual Walk & Roll to School Event
3. Annual Transit Day
4. Walking School Buses
5. Bike Trains
6. In-school Bicycle Physical Education
7. Drop-in Bicycling Practice Sessions

## 8. Personal Safety Training

Contractor will propose additional events, classes, and activities that teach relevant skills, encourage and celebrate use of the Four Fun Ways, or engage students and families in actively using the Four Fun Ways for one or more school trips to meet specific school or community needs. Contractor may be asked to develop and/or implement additional events, classes, or activities specified by the SFMTA, in line with approved strategic and implementation plans.

Additional events, classes, and activities that may be offered include, but are not limited to:

1. Park & Walk – organized walk from a designated meet-up point
2. Park & Roll – organized bike from a designated meet-up point
3. Adult “Biking with Children” Class
4. Bicycle Maintenance Workshops
5. 5<sup>th</sup> grade Transit Seminar
6. Muni Field Trips
7. Art Contests
8. Carpool Matching

In the case where work is identified, but a subcontractor is unable to provide services, Contractor can request in writing a waiver from providing the work. When approved, the SFMTA may, at its sole discretion, engage internal or contracted services to provide said services and reduce the amount available for contract implementation by the necessary amount to offer the services.

Templates, assets, curriculum, and promotional materials for events, classes, and activities must be reviewed and approved by the SFMTA prior to distribution or activity implementation following protocols established through Project Management Deliverable A1. The SFMTA and Contractor can mutually agree to a process that delegates approval authority for specific material/communications types to the Contractor or their delegate.

Implemented events, classes, and activities will reach students at elementary, middle, and high school levels, with direct programming to be delivered at the 33 priority focus schools identified by the SFMTA (a mix of elementary schools, middle schools, and high schools). In addition, students from a minimum of 75

total schools per year will be reached by a combination of school site and citywide programming. In the event that a priority focus school identified by the SFMTA is determined to no longer be a strong candidate for prioritized programming, either because they no longer need prioritized support or because all reasonable efforts to establish a program presence at the school have been made without appreciable responsiveness from the school community, the SFMTA may approve the removal and replacement of the school from the focus school list. It is understood that such replacement may impact the ability of Contractor to provide direct programming at replaced and newly selected priority focus schools in a given year. Such a decision will be informed by Contractor and School Liaison input and in line with the approved Evaluation Plan, and follow protocols established through Project Management Deliverable A1.

***Deliverable A1:** Monthly Summary Reports of program implementation activities, including dates and locations of events, classes and activities, language support provided, and metrics on participation and activity effectiveness in line with approved evaluation strategy, to be submitted with Contractor invoices. Summary Report format and content requirements will be defined in each task order.*

***Deliverable A2:** Record of implemented events, classes and activities and associated metrics in line with approved evaluation strategy, maintained in a technology platform or file system approved by the SFMTA and to which the SFMTA has full access, updated following protocols established through Project Management Deliverable A1.*

- B. Optional: Tasks outside of Implementation Plan:** based on input collected from the School Liaison, Evaluation and Implementation Teams, Contractor will propose Task Orders for additional work identified after Implementation Plans have been approved. Such tasks will support program goals and incorporate strategic planning input from the SFMTA.

***Deliverable B1:** Appropriate deliverables will be determined as a part of the Task Order process and defined in the issued Task Order.*

- C. Additional Community Subcontracts:** Contractor shall engage and, with the prior approval of the SFMTA, enter into subcontracts with up to five community-based organizations per year for no more than a total of \$75,000 a year. Selected community subcontractors will work with school communities who are typically underrepresented. Priority will be given to working with trusted community groups that can provide outreach and engagement that will further extend program reach to and participation by student populations that may otherwise be missed through the SF Safe Routes to School program in previous and current outreach

efforts. The approved partners shall engage in outreach activities designed to increase engagement, participation and learning consistent with the program's approved strategic plan and evaluation strategy. The selected community subcontractor(s) shall provide documentation to Contractor on the nature and extent of their proposed activities and how the proposed activities are consistent with the process outlined in Appendix A.2. Contractor shall send this documentation to the SFMTA. Contractor shall also track which activities community partners participate in.

If, after consultation between the SFMTA and Contractor, additional partners are deemed to be beneficial to achieving program goals and the Project Manager confirms that the impacts of managing a larger number of subcontractors are acceptable, more than five partners may be selected. If additional partners are agreed to, there will be no increase in the maximum budget for this item.

***Deliverable C1:** Approved selection criteria, as described in Appendix A.2.*

***Deliverable C2:** Subcontract deliverable documentation, as described in Appendix A.2.*

## **5. Evaluation**

Develop evaluation strategies to assess progress, including incremental progress, towards strategic and programmatic goals. Support ongoing program data collection, biennial student travel tallies, and the generation of reports for internal use as well as for communicating relevant and compelling program information to funders and stakeholders.

- A. Evaluation Strategy:** Designated evaluation staff, in consultation with the Contractor and informed by School Liaisons and historic program data, will develop evaluation strategies to capture actions, outcomes, and impacts of program activities and communications, and assess progress towards program goals. Strategies will focus on SFMTA-identified goals and priorities and be approved by the SFMTA for inclusion in an evaluation plan. The approved Evaluation Plan should include qualitative and quantitative metrics, tools and procedures for data collection, a process for using identified metrics to make data-based decisions in implementation and communication plans, and a proposed set of reports to be produced each year. Designated evaluation staff will identify or

develop evaluation tools and necessary IT infrastructure to support consistent collection, storage, and analysis of data required for evaluation strategies.

***Deliverable A1:** Evaluation Plan to be completed and approved within three months of initiation of the first Task Order, and updated once a year by the beginning of July.*

***Deliverable A2:** Evaluation Tools and IT Infrastructure needed to collect, store, and analyze program data to be proposed and approved within one month of initiation of the first Task Order, and updated as needed upon approval of the Evaluation Plan and Evaluation Plan updates. All tools and IT infrastructure purchased or licensed for use by the SF-SRTS Program will have the SFMTA identified as the primary administrator, and the SFMTA will have full access to all gathered data.*

**B. Evaluation Implementation:** Designated staff, under direction of the Contractor, will support ongoing data collection and report generation, and conduct Travel Tallies on behalf of the program to estimate SFUSD student mode split.

***Deliverable B1:** Annual Report, a thorough, clearly written and visually appealing report on program activities and impacts. The Annual Report will use program metrics, photographs, graphics, and narratives to communicate program activities and impacts, and a draft will be submitted no later than mid-July to allow for review, edits, and approval in time for distribution each August. The first Annual Report under this Contract will be prepared in July 2024.*

***Deliverable B2:** Other Reports. Additional reports, such as evaluations of citywide events, new program offerings, and a mid-year program update will be produced in accordance with the approved Evaluation Plan, Communications Plan, or at the SFMTA's request. Report format and content requirements will be defined in each Task Order.*

***Deliverable B3:** Travel Tallies. Perform counts of how students get to and from school, at all SFUSD schools using methodology provided by the SFMTA, and report the results. Travel Tallies will be performed in the fall of even-numbered years starting 2024 unless otherwise specified in an approved Task Order. Travel Tallies will be scheduled in coordination with SFUSD to reduce disruption by school recesses or other scheduled events. Results will be maintained in a technology platform or file system approved by the SFMTA and to which the SFMTA has full access, updated following protocols*

*established through Project Management Deliverable A1.*

***Deliverable B4:*** *Program Recommendation Report, to be completed at regular intervals to be defined in Task Orders, summarizing analysis of data collected by the program to assess efficacy of program offerings and make recommendations for incorporation into Implementation Plans.*

***Deliverable B5:*** *Training on Evaluation Tools and Infrastructure, to be performed as needed to ensure SRTS workers have the necessary knowledge and skills to interact with Evaluation Tools and IT Infrastructure systems*

***Deliverable B6:*** *Standardized Evaluation Tools, for identifying leading indicators that can help School Liaisons assess individual school population needs, measuring programmatic impacts, both immediate and long-term, and incorporating them into the database system, to be developed as needed in support of approved Evaluation Plan. Tools may include but are not limited to surveys, questionnaires, database forms.*

## **6. Purchasing**

Purchase and provide materials, incentives, supplies, and services needed to support program communications, classes, events, and activities, as approved by the SFMTA and in accordance with grant requirements and other requirements communicated by the SFMTA.

**A. Materials, Incentives and Services:** In alignment with the approved Purchasing Plan and with SFMTA approval, the Contractor will identify and, with SFMTA approval, purchase materials, incentives and services that support program communications, events, classes, and activities, which may include:

1. Safety items, such as handheld stop signs, helmets, and items with high visibility elements that support students in safely using the Four Fun Ways;
2. Incentives and promotional items that support student and school community interest and engagement;
3. Program assets for outreach to attract attention and engagement;
4. Identifying assets for SF-SRTS team members, such as name tags, business cards, and branded hats;
5. Print materials;
6. Equipment needed to provide program activities;

7. Materials needed for upkeep and maintenance of equipment used in events, classes, and activities;
8. Transportation costs related to providing program activities, including transit passes, vehicle rental, and fuel;
9. Services related to the provision of childcare in support of program activity delivery and attendance
10. Food and drink in support of increasing participation in program events, classes, and activities;
11. Venue rental costs for hosting program events, classes, and activities;
12. Membership fees for School Liaison participation in school-related groups, such as parent-teacher organizations;
13. Software and technology services supporting program communications and evaluation;
14. Other purchases as needed to support activities and operations as identified or approved by the SFMTA

In procuring the above materials and services, Contractor shall ensure that all recommended purchases are reviewed for age appropriateness and child-safety, customize purchases with SF-SRTS brand logo, key messages, and/or program themes as appropriate, identify and select vendors in accordance with requirements communicated by the SFMTA, secure and confirm SFMTA Project Manager approval before each purchase, track expenditures and remaining budget meticulously to prevent any cost-overruns, and maintain records of all purchases and the purchase process in a file system to which the SFMTA has full access, following protocols established through Project Management Deliverable A1.

***Deliverable A1: Annual Purchasing Plan.*** Contractor will propose and the SFMTA will approve a plan for purchases anticipated as necessary to support approved Implementation, Communications, and Evaluation Plans. The Purchasing Plan will include categories of purchases, an estimated budget and a timeline for purchasing, and will communicate how the proposed purchases support the approved Strategic, Implementation, Communications, or Evaluation Plans. Each purchase must be approved by the SFMTA prior to Contractor paying for the goods or service, following protocols established through Project Management Deliverable A1.

***Deliverable A2: Incentive and Asset Inventory.*** Contractor will keep a log of the current stock of incentives and program assets, maintained in a technology platform or file system approved by the SFMTA, and to which the SFMTA has full access, updated following protocols established through Project Management Deliverable A1.

***Deliverable A3: Record of Purchases.** Contractor will keep a record of each purchase and its approval by the SFMTA, maintained in a technology platform or file system approved by the SFMTA and to which the SFMTA has full access, updated following protocols established through Project Management Deliverable A1.*

#### **4. Department Liaison**

In performing the Services provided for in this Agreement, Contractor's liaison with the **SFMTA** will be Crysta Highfield ([crysta.highfield@sfmta.com](mailto:crysta.highfield@sfmta.com)).



## **Appendix A.2**

### **Community Based Organization Subcontracts Criteria and Procedure**

With SFMTA approval, Contractor will identify up to five community-based organizations (CBOs) to individually receive a contract, for a combined total not to exceed \$75,000 for all five. After conducting a competitive process approved by the SFMTA and selecting a preferred CBO, Contractor will submit proposals to the SFMTA for final approval before signing an agreement with a CBO subcontractor. Expenses will be invoiced on receipt of deliverables defined within each subcontract.

### **Process for Solicitation of Proposals**

In selecting appropriate CBO subcontractors, Contractor will identify for SFMTA approval a process to solicit proposals from CBOs that work with people who are typically underrepresented in school transportation outreach and engagement. Priority will be given to working with trusted community groups that can provide outreach and engagement that will further extend program reach to and participation by populations that may have been missed through prior outreach efforts.

The request for solicitation of proposals from CBOs will include a brief description of the goals and outcomes for the CBO to meet, including why the subcontract between the Contractor and CBO furthers the mission of the SFMTA's SF-SRTS program and how the contract is expected to increase short-term and longer-term participation among the selected CBO's target audience.

### **CBO Proposal Requirements**

CBO proposals shall include:

- How the identified specific goals and outcomes in the solicitation will be met.
- How the CBO proposes to engage in outreach with priority communities and how the proposal supports achieving the identified goals and needs for the program.
- How Contractor and the CBO will collect and report on outcomes, including, but not limited to: the number of community members engaged with and any identified evaluation metrics that are proposed to be met, in alignment with the evaluation strategy.
- A budget and short (one page max.) description of the work that will be completed, timeline and proposed deliverables (e.g., photos, sign-in sheets).

- Work scope, including number of hours and number of activities.

### **Other Selection Criteria**

- The CBO's work or mission has a connection to transit, active transportation, financial health, or physical/community health, safety and wellbeing.
- The CBO serves a priority community (including non-English speakers and low-income communities). This includes having staff who speak the language(s) most typically used by their focus communities.
- The CBO has experience in community outreach and engagement

## Appendix B Calculation of Charges

*Fully burdened rates should be used. Caltrans and/or the Federal Highway Administration (FHWA) will require all information as to how the fully burdened rates are derived, and the consultant team should be ready to provide that information upon request.*

*Price proposal submittals must comply with the Federal Acquisition Regulation (FAR) part 31 (federal cost principles for for-profit entities) or 2 CFR Part 230 (applicable to non-profit organizations)*

**Table 1:** Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and Subcontractors

<b>Firm</b>	<b>Position / Classification</b>	<b>Education / Experience</b>	<b>Direct Hourly Labor Rate</b>	<b>Fully Burdened Hourly Labor Rate (Product of Direct Hourly Labor Rate x Multiplier)</b>
San Francisco Bicycle Coalition	Implementation staff	2+ years serving youth and families, 1+ years implementing bicycle education or other transportation programming	\$32.86	\$60.46
San Francisco Bicycle Coalition	Project Assistant, Project Management	3+ years of contract management experience or related nonprofit administration experience	\$32.86	\$60.46
San Francisco Bicycle Coalition	School Assessment and Engagement (Liaison)	3+ years serving youth and families, preferably 1+ years with SFUSD or other public school system	\$32.86	\$60.46
San Francisco Bicycle Coalition	Program “Manager” (Director-level)	7+ years serving youth and families, 3+ years managing education contracts with multiple subcontractors (or equivalent nonprofit administration experience)	\$50.49	\$92.90
San Francisco Bicycle Coalition	Implementation Staff, League Cycling Instructors support staff	2+ years experience teaching bicycle education; League of American Bicyclists-certified	\$71.66	\$131.85

<b>Firm</b>	<b>Position / Classification</b>	<b>Education / Experience</b>	<b>Direct Hourly Labor Rate</b>	<b>Fully Burdened Hourly Labor Rate (Product of Direct Hourly Labor Rate x Multiplier)</b>
	(as needed)			
San Francisco Bicycle Coalition	Implementation Staff, League Cycling Instructors lead staff (as needed)	5+ years experience teaching bicycle education; League of American Bicyclists-certified	\$93.71	\$172.43
San Francisco Transit Riders	Implementation staff	2+ years experience in transit program implementation or other transportation programming	\$31.41	\$60.02
Walk San Francisco	Implementation staff	2+ years of serving SF youth and families, 1+ years of implementing walking education or other transportation programming	\$29.81	\$63.22
Walk San Francisco	School Assessment and Engagement	3+ years serving youth and families, preferably 1+ years with SFUSD or other public school system	\$29.81	\$63.22
YBike	Implementation staff: lead instructor	2+ years teaching bicycle education in schools, League of American Bicyclists-certified	\$21.99	\$48.82
YBike	Implementation staff: Program Coordinator	3+ years experience teaching bicycle education in schools, League of American Bicyclists-certified	\$27.01	\$59.96
YBike	Operations Coordinator	3+ years experience managing equipment and logistics	\$26.96	\$59.85
YBike	Associate Director	5+ experience in bicycle instruction and program management, League of American Bicyclists-certified	\$36.18	\$80.32
YBike	Program Director	7+ experience in bicycle instruction and program management, League of American Bicyclists-certified	\$43.41	\$96.37

<b>Firm</b>	<b>Position / Classification</b>	<b>Education / Experience</b>	<b>Direct Hourly Labor Rate</b>	<b>Fully Burdened Hourly Labor Rate (Product of Direct Hourly Labor Rate x Multiplier)</b>
Cause IMPACTS	Project Manager	M.A., 10+ years experience in program evaluation and project management	\$110.00	\$242
Cause IMPACTS	Operations Staff	M.A., 10+ years experience in program evaluation	\$100.00	\$210
Cause IMPACTS	Graphic Designer	5+ years experience in graphic design	\$60.00	\$126
Cause IMPACTS	Operations Staff	3+ years experience in project administration	\$70.00	\$147
Contigo Communications	Principal	MPA	\$141.00	\$249.57
Contigo Communications	Equity Consultant	BA, 5+ year experience in DEI consulting	\$141.00	\$249.57
Contigo Communications	Associate	BA, 2+ year experience in communications or related field, or Associate Degree with 5+ years of experience	\$85.00	\$150.45
Contigo Communications	School Outreach Coordinator	BA, 2+ years experience with communications, outreach or related field, or Associate Degree with 3+ years of experience	\$37.00	\$65.49
Contigo Communications	School Event Specialist	HS/BA, entry-level role	\$27.00	\$47.79
Intergraphics*	n/a	2+ years professionally translating in their language of expertise	n/a	\$.35/per word

**Table 2a: Schedule of Overhead Rates for Contractor and all Subcontractors**

<b>Firm</b>	<b>Overhead (%)</b>	<b>Multiplier</b>
San Francisco Bicycle Coalition	84%	1.84
San Francisco Transit Riders	91%	1.91
Walk San Francisco	112%	2.12
YBike	122%	2.22
Cause IMPACTS	110%	2.10
Contigo Communications	77%	1.77
Intergraphics*	N/A	N/A

### Profit and Markup for Contractor and Subcontractors

1. Profit to be negotiated task by task not to exceed 7%
2. Prime Contractor markup on labor performed by subcontractor not to exceed 3%

#### Other Direct Costs (ODC)

Direct costs will be as-needed, and pre-approved individually by the SFMTA as described in Appendix A.1, section 6 (Purchasing). The total amount of funding that will be approved for other direct costs will not exceed 8% of the total contract budget.

Other Direct Costs	
Item	Costs
As needed per task	At cost - not to exceed 8% of total contract amount





<b>Requested by:</b>	Name, Title	<b>Date</b>	
<b>Approved by:</b>	Name, Contract Manager	<b>Date</b>	
<b>Reviewed by:</b>	Trinh Nguyen, Manager Contracts & Procurement	<b>Date</b>	
<b>Reviewed by:</b>	Virginia Harmon, Contract Compliance Office	<b>Date</b>	
<b>Approved by:</b>	Division Director, Title	<b>Date</b>	

**Proposed Staff and Budget:**

NAME	HOURS	LOADED RATE	LABOR COST	ODCS	TOTALS
Total Services					
Profit					
Other Direct Costs (ODCs)					
<b>Grand Total This Task:</b>				<b>\$000,000</b>	
<b>Notes:</b>					
<b>Approved by Requestor:</b>					
<b>Signature:</b>				<b>Date:</b>	

## Appendix D

### FHWA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

#### I. DEFINITIONS

- A. City.** The City and County of San Francisco, a municipal corporation.
- B. Contractor or Consultant** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FHWA.
- C. California Department of Transportation (Caltrans)** is an agency of the State of California and a direct recipient of grant funds from FHWA.
- D. Federal Highway Administration (FHWA)** is an operating administration of the U.S. DOT.
- E. Government** means the United States of America and any executive department or agency thereof.
- F. Project** means the task or set of tasks listed as described in the grant application and grant agreement between Caltrans and the Subrecipient.
- G. Subrecipient** means the San Francisco Municipal Transportation Agency, an agency of the City and County of San Francisco, which receives Federal assistance through Caltrans.
- H. Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- I. Third Party Contract** means a contract or purchase order awarded by the Subrecipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FHWA.
- J. 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 FHWA.
- K. U.S. DOT or 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 U.S. DOT and FHWA regulations, policies, procedures and directives, 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. COST PRINCIPLES

- A.** Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, and 2 CFR Part 200, as applicable, shall be used to determine the cost allowability of individual items.

- B. Contractor agrees to comply with federal procedures in accordance with 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards).
- C. Any costs for which payment has been made to a Contractor that are determined by subsequent audit to be unallowable under 2 CFR Part 200 and 48 CFR Part 31 are subject to repayment by Contractor to City.
- D. All reimbursements to Contractor will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

#### **IV. TRAVEL AND PER DIEM PAYMENTS**

Reimbursements to Contractor and its subcontractors for travel and subsistence (per diem) expenses shall not exceed rates authorized to be paid rank-and-file California State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by Contractor are in excess of DPA rates, Contractor is responsible for the cost difference, and any overpayments inadvertently paid by City shall be reimbursed to City by Contractor on demand within 30 days of invoice.

#### **V. ACCOUNTING SYSTEM**

Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs by line item for the Project. The accounting system shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by City.

#### **VI. SAFETY**

- A. Consultant shall comply with California OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by SFMTA's Safety Officer and other SFMTA representatives.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

#### **VII. ACCESS TO RECORDS**

- A. The Contractor agrees to provide the City, the FHWA Administrator, Caltrans, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor that 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 five 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 FHWA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

## **VIII. DEBARMENT AND SUSPENSION**

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Contractor certifies as follows:

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

## **IX. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor; to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or violation of this warranty, the SFMTA shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **X. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

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.

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

## **XI. CIVIL RIGHTS -- FEDERAL**

**A. Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42

U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FHWA may issue.

**B. Contract Assurance.** The Contractor and its subcontractors 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 its subcontractors 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.

**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 FHWA 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 FHWA 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 FHWA may issue.

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

## **XII. CIVIL RIGHTS – STATE**

- A. In the performance of this Agreement, Contractor and its subcontractors shall not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its subcontractors shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. 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. Contractor and its subcontractors shall post in conspicuous places, available to employees for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment section.
- B. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.
- C. Contractor shall include the above provisions in all subcontractors to perform work under this Agreement.

## **XIII. 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 FHWA-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 FHWA 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 FHWA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **XIV. 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.

#### **XV. INCORPORATION OF FHWA 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 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FHWA-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 FHWA terms and conditions.