

THIS PRINT COVERS CALENDAR ITEM NO.: 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Chief Strategy Officer

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Contract No. SFMTA-2024-78 with ICF Jones & Stokes, Inc., and Contract No. SFMTA-2024-79 with Environmental Science Associates for as-needed environmental analysis services and public outreach and engagement primarily for the Building Progress Program. Each contract has an initial term of six years, with two options to extend the term for an additional year, for a total of eight years, and a not-to-exceed amount of \$4,500,000 over the eight-year period.

SUMMARY:

- The SFMTA’s Building Progress Program is a \$2+ billion multi-year effort which has the goal of rebuilding and modernizing SFMTA’s oldest and largest bus, rail, and other facilities and transitioning the SFMTA to a zero-emission fleet. The program includes many projects such as the Presidio Yard Modernization Project and the Kirkland Yard Electrification Project.
- In January 2024, the SFMTA issued a Request for Proposals (RFP) for environmental analysis services in accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), and public outreach and engagement. The services would primarily support Building Progress Program projects through as-needed task orders.
- The SFMTA will fund the as-needed task orders through the budgets for the specific projects.
- Staff recommends approving as-needed professional services contracts with ICF Jones & Stokes, Inc., and with Environmental Science Associates to support the SFMTA in environmental analysis services and public outreach and engagement.

ENCLOSURES:

1. SFMTAB Resolution
2. SFMTA Contract No. SFMTA 2024-78 with ICF Jones & Stokes, Inc
3. SFMTA Contract No. SFMTA-2024-79 with Environmental Science Associates

APPROVALS:

DIRECTOR  _____

SECRETARY  _____

DATE

September 25, 2024

September 25, 2024

ASSIGNED SFMTAB CALENDAR DATE: October 1, 2024

PURPOSE

Authorizing the Director of Transportation to execute Contract No. SFMTA-2024-78 with ICF Jones & Stokes, Inc., and Contract No. SFMTA-2024-79 with Environmental Science Associates for as-needed environmental analysis services and public outreach and engagement primarily for the Building Progress Program. Each contract has an initial term of six years, with two options to extend the term for an additional year, for a total of eight years, and a not-to-exceed amount of \$4,500,000 over the eight-year period.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This item aligns with the following SFMTA Strategic Plan Goals:

Goal 7: Build stronger relationships with stakeholders.

Goal 8: Deliver quality projects on-time and on-budget.

Goal 9: Fix things before they break, and modernize systems and infrastructure.

Goal 10: Position the agency for financial success.

This item 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.
8. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.

DESCRIPTION

The SFMTA's Building Progress Program (description available at <https://www.sfmta.com/projects/building-progress-program>) is a \$2+ billion multi-year effort to repair, renovate and modernize the SFMTA's aging facilities to keep the City moving and to transition the SFMTA to a zero-emission fleet. The program includes many projects, including work at Presidio Yard, Cable Car Barn, and Flynn Yard.

These individual projects within the Building Progress Program will require environmental analysis services in accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), as needed. They will also require public engagement and outreach. The SFMTA may also require such services for other efforts outside the Building Progress Program.

Procurement

The SFMTA issued a Request for Proposals (RFP) on January 30, 2024, seeking qualified contractors to provide environmental analysis and public outreach and engagement services. The SFMTA received proposals on March 19, 2024 from three firms: Environmental Science

Associates, ICF Jones & Stokes, Inc, and SWCA Environmental Consultants. A selection committee consisting of staff from the SFMTA and the San Francisco Planning Department evaluated these proposals and interviewed the three firms. The selection committee ranked the three firms in the following order: ICF Jones & Stokes, Inc, SWCA Environmental Consultants and Environmental Science Associates. All three firms have extensive environmental analysis services and public outreach and engagement experience in San Francisco.

The SFMTA started contract negotiations with ICF Jones & Stokes, Inc and SWCA Environmental Consultants. On July 31, 2024, SWCA Environmental Consultants formally withdrew from contract negotiations after being unable to provide a reasonable pricing formula. The SFMTA then started negotiations with Environmental Science Associates. After detailed negotiations, the SFMTA reached agreement to contractual terms with both ICF Jones & Stokes, Inc and Environmental Science Associates.

Contract No. SFMTA-2024-78 with ICF Jones & Stokes, Inc and Contract No. SFMTA-2024-79 with Environmental Science Associates will have an initial term of six years, with SFMTA having two options to extend the term for an additional year, for a total of eight years. The Contract outlines a general scope of environmental analysis services and public outreach and engagement. Each contract has a not to exceed amount of \$4,500,000, or the total amount for the two contracts of \$9,000,000.

ICF Jones & Stokes, Inc and Environmental Science Associates both have a Small Business Enterprise subcontracting participation requirement of 20 percent, and a Women-Owned Disadvantaged Business Enterprise subcontract participation requirement of five percent.

Process for Awarding Task Orders Under the Contract

After the contracts are awarded, SFMTA project managers will prepare detailed scopes of work for as-needed task orders. The project managers will review the resulting task order proposals from the contractors and negotiate pricing for each 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.

The project manager will negotiate with the contractors based on the complexity of the scope envisioned in the task order. The task orders will apply pre-negotiated fully loaded labor rates (inclusive of all costs such as overhead) to the estimated hours, multiplied by the agreed-upon profit. The profit for each task order will not exceed seven percent. The direct hourly labor rates within the pre-negotiated fully loaded labor rates shall be fixed at that level until 12 months after the date of award of the contracts. Thereafter, the direct hourly labor rates may adjust according to the terms of the contracts.

STAKEHOLDER ENGAGEMENT

The SFMTA did not require extensive stakeholder engagement to develop the RFP. The Project Manager for this RFP has over 15 years of environmental analysis services and public outreach and engagement experience, including the last 12 years in San Francisco. They developed the RFP based on their experience and internal consultation with other staff who have worked on such services for projects in the Building Progress Program, including the Potrero Yard Modernization Project.

The SFMTA issued the RFP on January 30, 2024, including a targeted email to consultants that are on the San Francisco Planning Department's Pre-Qualified Consultant Pool for CEQA work. The SFMTA held a pre-proposal conference for potential RFP proposers on February 13, 2024, and had a deadline for questions from potential RFP proposers on March 5, 2024. The input received at the pre-proposal conference and subsequently resulted in clarifications to the RFP.

The firms awarded contracts under this RFP will support the SFMTA to do outreach and engagement primarily for projects in the Building Progress Program, as described in the next section.

ALTERNATIVES CONSIDERED

No contract

The SFMTA considered the alternative of managing the environmental analysis services and public outreach and engagement for individual projects in the Building Progress Program without contractor support. This approach would likely result in delays, and associated increased costs, due to the lack of staff resources.

The San Francisco Administrative Code Chapter 31 ("Chapter 31") designates the Planning Department's Office of Environmental Review (aka Environmental Planning division) as the lead agency for public and private projects within San Francisco and/or under the jurisdiction of San Francisco departments, for purposes of CEQA. This covers individual projects in the Building Progress Program. The Planning Department uses contractors to prepare complex CEQA documents or technical studies, such as Environmental Impact Reports. For example, a contractor prepared the Environmental Impact Report for the Potrero Yard Modernization Project, the first major project in the Building Progress Program. The Planning Department also permits project sponsors, like the SFMTA, to hire contractors in situations where the contractor may be able to prepare CEQA documents faster than the Planning Department.

Chapter 31 does not designate specific responsibilities for purposes of NEPA. While the SFMTA has experience in NEPA, it is limited, and the SFMTA would benefit from qualified contractors to prepare defensible, high-quality NEPA documents for individual projects in the Building Progress Program that seek federal funding.

The Building Progress Program has significant public outreach and engagement needs that sometimes require specialized skills. SFMTA full-time staff mostly conduct outreach and

engagement for the program. However, periodic events and surges in the outreach schedule require assistance beyond SFMTA staff capacity. Without contractor support, the overall Building Progress outreach program would need to be reduced in scale. This would result in less resources for in-depth, multichannel outreach. While the SFMTA is committed to deeply engaging stakeholders on these projects, SFMTA staff would not have capacity to deliver the type of large-scale events that have defined the outreach for projects like the Potrero Yard Modernization Project. Additionally, SFMTA staff would not have the expertise needed to produce highly specialized real estate development graphics and design renderings for facility projects or a mechanism to deploy innovative virtual tools or multi-media advertising campaigns to facilitate broader public engagement.

Both selected contractors have extensive experience in environmental analysis services and public outreach and engagement. Without this support, the SFMTA will likely experience delays and associated increased costs. In addition, the projects may not be completed at all if an environmental analysis requires certain expertise that the City lacks.

Contracts for each Project

Under this alternative, the SFMTA would solicit contractors for the environmental analysis services and public outreach and engagement for each project in the Building Progress Program. This approach would likely result in delays and increased staff costs to the projects due to the time it takes to solicit, review proposals, negotiate and procure a contractor or contractors for each project. For example, it took eight months between the SFMTA's issuance of the RFP for these contracts and this SFMTA Board of Directors adoption hearing. This excludes the time it took the SFMTA to prepare the RFP. This alternative is a less efficient use of resources than the recommended alternative.

FUNDING IMPACT

The SFMTA would fund the as-needed task orders through the budgets for the specific projects including but not limited to those in the Building Progress Program. This includes using federal funds and local funds.

ENVIRONMENTAL REVIEW

On September 9, 2024, the SFMTA, under authority delegated by the Planning Department, determined that the approval of Contract No. SFMTA-2024-78 with ICF Jones & Stokes, Inc and Contract No. SFMTA-2024-79 with Environmental Science Associates is not a "project" under CEQA pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The SFMTA Contract Compliance Office has approved this procurement.

The City's Civil Service Commission approved Contract number PSC # 49788 - 22/23 for this these contracts on October 17, 2022.

The City Attorney has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Contract No. SFMTA-2024-78 with ICF Jones & Stokes, Inc., and Contract No. SFMTA-2024-79 with Environmental Science Associates for as-needed environmental analysis services and public outreach and engagement primarily for the Building Progress Program. Each contract has an initial term of six years, with two options to extend the term for an additional year, for a total of eight years, and a not-to-exceed amount of \$4,500,000 over the eight-year period.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) Building Progress Program is a \$2+ billion multi-year which has the goal of rebuilding and modernizing SFMTA's oldest and largest bus, rail, and other facilities and transitioning the SFMTA to a zero-emission fleet; and,

WHEREAS, The Building Progress Program includes many projects that will require environmental analysis services and public outreach and engagement; and,

WHEREAS, On January 30, 2024, the SFMTA issued a Request for Proposals seeking qualified contractors for as-needed environmental analysis services and public outreach and engagement primarily for the Building Progress Program; and,

WHEREAS, March 19, 2024, the SFMTA received written proposals from three firms: Environmental Science Associates, ICF Jones & Stokes, Inc, and SWCA Environmental Consultants; and,

WHEREAS, A Selection Committee evaluated the three proposals, interviewed the three firms; and,

WHEREAS, The SFMTA reached agreement to contractual terms with both ICF Jones & Stokes, Inc and Environmental Science Associates; and,

WHEREAS, On September 9, 2024, the SFMTA, under authority delegated by the Planning Department, determined that the approval of the contracts is not a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; 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-2024-78 with ICF Jones & Stokes, Inc., for as-needed environmental analysis services and public outreach and engagement primarily for the Building Progress Program, for an initial term of six years, with two options to extend the term for an additional year, for a total of eight years, and a not-to-exceed amount of \$4,500,000 over the eight year period; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2024-79 with Environmental Science Associates for as-needed environmental analysis services and public outreach and engagement primarily for the Building Progress Program, for an initial term of six years, with two options to extend the term for an additional year, for a total of eight years, and a not-to-exceed amount of \$4,500,000 over the eight-year period.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 1, 2024.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Agreement between the City and County of San Francisco and
ICF Jones & Stokes, Inc.
for As-Needed Environmental Analysis Services and Public
Outreach and Engagement for the Building Progress Program**

Contract No. SFMTA-2024-78-FTA

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

**Agreement between the City and County of San Francisco and
ICF Jones & Stokes, Inc.
Contract No. SFMTA-2024-78-FTA**

This Agreement is made as of _____, in the City and County of San Francisco (City), State of California, by and between ICF Jones & Stokes, Inc. (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA wishes to procure from Contractor assistance with: (1) environmental analysis services in accordance with the California Environmental Quality Act (CEQA), and the National Environmental Policy Act (NEPA), as needed, and all relevant and required technical reports and associated materials; and (2) public engagement and outreach primarily related to the SFMTA's Building Progress Program.

B. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) No. SFMTA-2023-22-FTA issued on January 30, 2024, pursuant to which City selected Contractor as one of the highest-qualified scorers.

C. Contractor has committed to achieving Small Business Enterprise (SBE) participation of 20% and Woman-Owned Disadvantaged Business Enterprise (DBE) participation of 5% for this Agreement.

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

E. The City's Civil Service Commission approved Contract number 49788 - 22/23 for this Agreement on October 17, 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, covering the performance of the Work and furnishing of labor, materials, equipment, tools, and services, including Work incidental to the procurement, to include the Technical Specifications (if any), all Conformed Contract Documents, the Contract bonds or other security all attached appendices, any future amendments, and all applicable City Ordinances and Mandatory City Requirements that are 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” 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. City Data includes, without limitation, Confidential Information.

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

1.8 “Confidential Information” means confidential, City information including, but not limited to, personal identifiable information (PII), protected health information (PHI), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M). Confidential Information includes, without limitation, city Data.

1.9 “Conformed Contract Documents” Contract documents revised to incorporate all addenda, and information included in the Contractor's Proposal and accepted by the City.

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

1.11 “Contract Modification” means a written 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.

1.12 “Contractor” or “Consultant” means **ICF Jones & Stokes, Inc.**, 201 Mission Street, Suite 1500, San Francisco, California 94105.

1.13 “Controller” means the Controller of the City.

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

1.15 “Deliverables” means Contractor’s or its Subcontractors’ work product, including any partially completed work products and related materials, 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.

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

1.17 “Disadvantage 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.

1.18 “Effective Date” means the date upon which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1. In the case of a task order contract, the “Effective Date” means the date the Director of Transportation executes the Contract.

1.19 “Equipment” means the hardware, computers, servers, and other components, diagnostic and simulation tools, spare parts and other parts and electronic, mechanical or electrical components to be supplied by Contractor under this Agreement.

1.20 “FTA” means the Federal Transit Administration.

1.21 “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.

1.22 “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.

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

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

1.25 “Proposal” means the technical and management information and prices submitted by Contractor in response to the RFP.

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

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

1.28 “Services” or “Work” 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.

1.29 “Small Business Enterprise” or “SBE” means a for-profit, small business concern with a three-year average gross revenue that do not exceed the thresholds set forth in Appendix A, Section III.B and either: 1) is certified under any of the following programs: the State of California's Small Business Program with the Department of General Services (State Program), the City and County of San Francisco's LBE Program (City Program), or the California Unified Certification Program (Federal DBE program), or 2) has received written confirmation from CCO that it meets the SFMTA’s program eligibility requirements.

1.30 “Subconsultant” or “Subcontractor” means any firm under contract to the Contractor, or any lower-tier party subcontractor engaged by the Subcontractor, for services under this Agreement.

1.31 “Task Order” means a written directive from the SFMTA to the Contractor to perform specified work, issued under the procedures described in Section 4.1 below.

Article 2 Term of the Agreement

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

2.2 The SFMTA has two options to renew the Agreement for a period of one year each. The SFMTA may exercise an option at the Director of Transportation’s sole and absolute discretion 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

3.1.1 Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, 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.

3.1.2 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).

3.2 Authorization to Commence Work. Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a Purchase Order, Task Order or notice to proceed. Such authorization may be for a partial or full scope of work.

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

3.3.1 Calculation of Charges and Contract Not to Exceed Amount. The amount of this Agreement shall not exceed (Agreement Value) Dollars (\$4,500,000). The SFMTA will pay Contractor on a task-order basis for Services it performs under this Agreement. Contractor's compensation for the Services it performs under Task Orders shall be based on:

(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 Subcontractor markup and, profit negotiated in accordance with Appendix B) subject to a total not to exceed amount. City shall not 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.

3.3.2 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 date of award of this Agreement. Thereafter, during the term of this Agreement, Contractor may only request to escalate these rates each anniversary of the award date of this Agreement 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. No direct hourly labor rate may be increased without prior written approval of the SFMTA and will be effective as of the date that 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 readjustment 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 the Contractor's and all Subcontractors' actual rates during the term of this Agreement to the SFMTA Project Manager. 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. The standards and requirements for compensability of Contractor's expenses under this Agreement shall be as set out in "2 CFR Part 200, 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 the City does not intend to pay the Contractor for costs under this Agreement that would not be reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments 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 markups. Compensation for travel-related expenses shall be at direct cost without mark-up. 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 approved in writing by the SFMTA in the form of a Task Order Modification. 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. Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses; the SFMTA will not reimburse the Consultant 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. Taxicabs and 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.

3.3.3 Submission of Invoices. For Task Orders based on a negotiated number of hours, Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed (including goods delivered, if any) in the immediately preceding month, unless a different schedule is set out in Appendix B. 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 has been satisfactorily performed.

3.3.4 Payment Limited to Satisfactory Services and Delivery of Goods. Contractor is not entitled to any payments until the SFMTA approves the goods and/or Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Services, even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by the City in such case must be replaced by Contractor without delay at no cost to the City.

3.3.5 Withhold Payments. If Contractor fails to provide 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.

3.3.6 Invoice Format. Invoices submitted 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) Description of the Services performed and/or goods delivered
- (f) PeopleSoft Supplier Name and ID
- (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 labor charges for the Task Order for which Contractor seeks payment. Profit will be for an amount not to exceed 7% of the task order
- (k) Total mark-up for current invoice period for all Subcontractor's work effort for that invoice period as an amount not to exceed 3% of Subcontractor's total labor charges
- (l) Contract payment terms;
- (m) Sales/use tax (if applicable)
- (n) Total costs
- (o) Progress Payment Form – SFMTA SBE/DBE Form No. 6

3.3.7 Payment Terms

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

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

(c) No additional charge shall accrue against City in the event City does not make payment within any time specified by Contractor.

3.3.8 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 SBE/DBE 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.

3.3.9 SBE/DBE Payment and Utilization Tracking System. Contractor shall pay SBE/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.

3.3.10 Getting Paid by the City Payment for Goods and/or Services

(a) City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractors shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfgov.org).

(b) At the option of the SFMTA, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.

3.3.11 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 (FTA Requirements for Professional Service 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.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine, and make copies 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.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or Subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section.

3.6 Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services 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 compensate 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 Changes. The SFMTA may at any time, by a written order, make changes within the general scope of this Agreement. Such change shall serve to modify this Agreement to the extent necessary to execute the change as directed. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Services under this Agreement, whether changed or not changed by the order, the SFMTA shall make an

equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the Agreement accordingly. The Contractor must assert its right to an adjustment under this article within three working days from the date of receipt of the written order. Failure by Contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment. However, if the SFMTA decides that the facts justify it, the SFMTA may receive and act upon a proposal submitted at any time before final payment of the Agreement. If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, the SFMTA shall have the right to prescribe the manner of the disposition of such equipment or materials. Failure to agree to any adjustment shall be a dispute under Section 11.6, Dispute Resolution Procedure. However, nothing in this provision shall excuse the Contractor from proceeding with the Agreement as changed.

4.3 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). Contractor time spent managing or overseeing work performed by Subcontractors will not be compensable.

4.3.1 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.

4.3.2 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.

4.3.3 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 SBE/DBE forms, and administrative 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 7% of Contractor's estimated direct hourly labor rates and overhead costs; and
- For work performed by all Subcontractors total mark-up for Contractor on Subcontractor's work effort as 3% of Subcontractor's total labor charges (does not include travel and ODCs).

4.3.4 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 consistent with Section 3.3.1 above.

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

4.3.6 Subcontracting Requirements. The CCO will review the final negotiated Task Order scope and schedule to determine the percentage of SBE subcontracting participation for the specific Task Order. The SBE subcontracting percentage assigned to each Task Order shall be tracked by the CCO as part of the overall SBE subcontracting participation requirement set forth in the Agreement. The Contractor must in good faith comply with the following:

(a) The individual SBE subcontracting percentage set for each Task Order.

(b) The overall SBE subcontracting participation requirement established for the entire project (which includes the commitments the Contractor made to each

of its listed SBE Subcontractors at time of proposal). See Section 10.6 Small Business Enterprise Program for the overall SBE subcontracting participation requirement established for this project.

4.3.7 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.

4.3.8 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.

4.3.9 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.

4.3.10 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.

4.4 Qualified Personnel. Contractor represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. 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 sufficient resources for timely completion within the project schedule. The SFMTA reserves the right to require the Contractor to reassign any individual on the Contractor's project team if the SFMTA is unsatisfied with that person's performance or that person fails to demonstrate the required qualifications or expertise. The SFMTA reserves the right to review and approve any replacement of team members, and the right to reject invoices submitted related to work performed by replacement team members that the SFMTA did not approve.

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.

4.5 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.

4.6 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.

4.7 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 4.3.3 above.

4.8 Subcontracting

4.8.1 Contractor may subcontract portions of the Services only upon prior written approval of the SFMTA. 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.

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

- Adavant Consulting
- Albion Environmental, Inc.
- Archeo-Tec
- Baseline Environmental
- Circlepoint
- Fehr & Peers
- Groundwork Planning &
- LCW Consulting
- Panorama Environmental, Inc.
- Prevision Design
- RWDI Consulting Engineers
- Wilson Ihrig & Associates

4.9 Independent Contractor; Payment of Employment Taxes and Other Expenses

4.9.1 Independent Contractor. For the purposes of this Section 4.9, "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 is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required 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 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 is liable for its acts and omissions. 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 of its agents or employees. 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, is not performing in accordance with the requirements of this Section, 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 warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.9.2 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 4.9.2 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 hold 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.

4.10 Assignment. The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise, transferred unless first approved by the SFMTA by written instrument executed and in the same manner as this Agreement. Any purported Assignment made in violation of this provision shall be null and void.

4.11 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.

4.12 Reserved. (Liquidated Damages)

4.13 Reserved. (Performance Bond)

4.14 Reserved. (Fidelity Bond)

4.15 Reserved. (Emergency - Priority 1 Service)

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.

(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) Professional Liability Coverage, applicable to Contractor's profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Reserved. (Technology Errors and Omissions Liability Coverage)

(f) Reserved. (Cyber and Privacy Coverage)

(g) Reserved. (Pollution Liability Coverage)

5.1.2 Additional Insured

(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) The Commercial Automobile Liability Insurance policy must be endorsed to include (i) Auto Pollution Additional Insured Endorsement naming as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

5.1.3 Waiver of Subrogation. 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

(a) The Commercial General 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.

(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) The Pollution 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.

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 including additional insured and waiver of subrogation status, as required, with insurers with ratings comparable to A-, VIII or higher that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(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 and waive subrogation in favor of the City, where required.

5.2 Indemnification

5.2.1 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 liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, 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 personal 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; except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Contractor, its Subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

5.2.2 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.

5.2.3 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.

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

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

5.2.6 Under no circumstance will City indemnify or hold harmless Contractor.

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 (CALCULATION OF CHARGES AND CONTRACT NOT TO EXCEED AMOUNT) 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 San Francisco Administrative Code Section 23.39, 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 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 (Notice of Termination). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective (Termination Date).

8.1.2 Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the 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 on and after the Termination Date.

(b) Cancelling all existing orders and subcontracts by the Termination Date, 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 cancelled. 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 cancellation of such orders and subcontracts.

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

(e) Completing performance of any Services that the SFMTA requires Contractor to be completed prior to the Termination Date.

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

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

(a) The reasonable cost to Contractor, without profit, for all Services provided prior to the Termination Date, for which the SFMTA has not already made 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 and returning material or equipment, 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 such materials and not otherwise recovered by or credited to the SFMTA, and any other appropriate credits to the SFMTA against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its Subcontractors after the Termination Date, 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 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
4.10	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws
Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default 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 Default Remedies. 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 in accordance with Article 11.

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

8.4 Rights and Duties upon Termination or Expiration

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

3.3.4	Payment Limited to Satisfactory Services and Delivery of Goods
3.3.11(a)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
8.2.2	Default Remedies
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, any partially-completed Deliverables, and related materials, shall become the property of and will be transmitted to City. Unless expressly authorized in this writing by the SFMTA, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Works for Hire. All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of the City. If any such Deliverables are ever determined not to be works for hire under federal 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 its Subcontractors. With City's prior written approval, Contractor and its Subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of this Agreement.

Article 10 Additional Requirements Incorporated by Reference

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

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

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

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Labor and Employment Code Article 141 (formerly 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 Article 141. Information about and the text of Article 141 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 Article 141, 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 San Francisco Labor and Employment Code Articles 131 and 132 (formerly Chapters 12B and 12C of the San Francisco Administrative Code). Contractor shall incorporate by reference in all subcontracts the provisions of Sections Articles 131.2(a), 131B.2(c)-(k), and 131C.3 of the San Francisco Labor and Employment Code and shall require all Subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131B and 132.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Article 131.2 (formerly San Francisco Administrative Code 12B.2) applies to this Agreement. 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 Labor and Employment Code Article 131.2.

10.5.3 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.

10.6 Small Business Enterprise Program

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

10.6.2 Compliance with SBE Program. Contractor shall comply with the SBE 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 SBE 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. If San Francisco Labor and Employment Code Article 111 (formerly Administrative Code Chapter 12P) applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Chapter Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

10.8 Health Care Accountability Ordinance. If San Francisco Labor and Employment Code Article 121 (formerly Administrative Code Chapter 12Q) applies to this contract, Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121 as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) or California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq., if state funds involved.

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 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Article 142 (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Labor and Employment Code (Article 142), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

10.14.2 The requirements of Article 142 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. Article 142 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: Wade Wietgreffe
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue
San Francisco, CA 94103
wade.wietgreffe@sfmta.com

To Contractor: John Cook
ICF Jones & Stokes, Inc.
201 Mission Street, Suite 1500
San Francisco, CA 94105
John.Cook@icf.com

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by email, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least 10 Days Prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Laws Requiring Access for People with Disabilities

11.2.1 Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.2.2 Reserved. (Information and Communication Technology Accessibility)

11.3 Incorporation of Recitals. The matters recited above are hereby 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 §7920 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 must submit the Contract Modification Form (CMD Form 10) along with the required supporting documentation to the CCO and obtain prior CCO approval for 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%, and then for any subsequent amendment, modification, supplement, or change order that would result in a cumulative increase of the last CCO approved value by more than 20%.

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. Disputes will not be subject to binding arbitration. 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 including the appendices sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

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

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

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

11.13 Order of Precedence. The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. 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 in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor's proposal, and

Contractor's printed terms, respectively. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

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 any City Data under this Agreement, and in no event later than 24 hours after Contractor 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. 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 City Data; Confidential Information . In the performance of Services, Contractor may have access to, or collect on City’s behalf, City Data, which may include proprietary or Confidential Information, that if disclosed 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. Contractor agrees to hold City Data received from, or created 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 by Contractor or its authorized Subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent 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. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. 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, 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 and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

13.5.3 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than 30 Days, return all Data given to or collected or created 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.

13.6 Loss or Unauthorized Access to City’s Data; Security Breach Notification. Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any “Leak”) within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. Contractor shall pay for the provision to the affected individuals of twenty-four (24) months of free credit monitoring services, if the Leak involved information of a nature reasonably necessitating such credit monitoring. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 14 MacBride and Signature

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

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>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: _____ David F. Innis Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>ICF Jones & Stokes, Inc.</p> <hr/> <p>Patricia Toben-Cropper Senior Contracts Manager</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: 0000003246</p>
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Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form
- D: FTA Requirements
- E: SBE Requirements

Appendix A Scope of Services

1. Description of Services

The SFMTA is soliciting the services of a firm(s) to perform environmental analysis services in accordance with CEQA), NEPA, as-needed, and public outreach and engagement. The services will primarily involve the SFMTA Building Progress Program, including individual projects from the Building Progress Program, which has the goal of rebuilding and modernizing SFMTA's oldest and largest bus, rail, and other facilities. Such services must satisfy the requirements of CEQA, San Francisco Administrative Code Chapter 31, and any NEPA requirements. Other services to be performed may include public outreach and engagement as required by laws or as sought by the SFMTA for the projects.

The SFMTA's **Building Progress Program** is a \$2+ billion multi-year effort to repair, renovate, and modernize the SFMTA's aging facilities to keep the City moving and transition to a battery-electric bus fleet. A detailed description of the program can be found at Building Progress Program | SFMTA. Major individual projects that may need environmental and outreach work may include (draft list – individual Purchase Orders and/or Task Orders will define scope, schedule, budget):

- Presidio Yard Modernization Project at 949 Presidio Avenue: demolition of existing facility and replacement with a new transit facility, along with joint development uses. Scope may include CEQA review and NEPA review and public outreach and engagement, starting in 2024.
- Kirkland Yard Electrification Project at 2301 Stockton Street: renovation of an existing transit facility to add charging infrastructure and parking. Scope may include NEPA review and public outreach and engagement, starting in 2024.
- Islais Creek Motor Coach Facility at 1301 Cesar Chavez Boulevard: renovation of an existing transit facility to add charging infrastructure. Scope may include NEPA review and public outreach and engagement, starting in 2024.
- Cable Car Barn Master Plan and System Improvements: cable car guideway improvements at the barn (1201 Mason Street) and in the public right-of-way.
- Other joint development opportunities such as the SFMTA 4th-5th/Mission Garage, the SFMTA Moscone Garage, SFMTA 4th/Folsom street site, and other SFMTA properties.
- Other projects that may be identified by the SFMTA.

The following describes the types of work tasks included in individual Purchase Orders and/or Task Orders.

A. Environmental Analysis Services

The San Francisco Administrative Code Chapter 31 (“Chapter 31”) designates the Planning Department’s Office of Environmental Review (aka Environmental Planning division) as the lead agency for public and private projects within San Francisco and/or under the jurisdiction of San Francisco departments, for purposes of CEQA. Chapter 31 does not designate specific responsibilities for purposes of NEPA.

The consultant and/or subcontractors shall perform professional and technical services in accordance with Chapter 31 requirements and other local (e.g., (e.g., Historic Preservation Commission duties under NEPA), state (e.g., CEQA) and federal laws and regulations (e.g., NEPA) for environmental analysis, as needed. This may include preparing a variety of CEQA and NEPA documents.

Consultants prepare Environmental Impact Reports (EIRs) and many complex Mitigated Negative Declarations for CEQA in San Francisco. Applicable CEQA documents must address all topics contained in San Francisco’s Initial Study/environmental evaluation checklist. The checklist generally mirrors Appendix G of the CEQA Guidelines but contains topics specific to San Francisco. Applicable CEQA documents are prepared in accordance with the Department’s *Consultant Guidelines for the Preparation of Environmental Review Documents* (available at Planning Department’s Environmental Review Resources).

Consultants prepare Environmental Impact Statements (EISs) and complex Environmental Assessments for NEPA in San Francisco. Applicable NEPA documents must address all NEPA requirements, including any guidance documents by the applicable Federal or State agency (e.g., Federal Transit Administration).

Consultants will generally be expected to: complete document production; conduct appropriate notification according to City, State, and Federal requirements; attend hearings; track and record oral and written comments; respond to comments submitted on environmental review documents and appeals; and prepare the administrative record for the projects. Consultants will generally be expected to ensure all subconsultant-prepared materials are reviewed prior to submittal to Environmental Planning (e.g., technical studies). Consultant resources must reflect a proven ability to conduct environmental review in an accurate, adequate, objective, and legally defensible manner (e.g., see Planning’s objective protocols available at Planning Department’s Environmental Review Resources).

Consultants may also support City staff in document production that the supports the approval of the projects such as city agency and decision-making staff reports, environmental findings under CEQA and NEPA, or other related tasks, assuming it does not create conflicts of interest on the projects.

Please Note: The SFMTA or Planning may utilize professional contract peer review of the documents at key points during the EIRs preparation process.

B. Public Outreach and Engagement

The consultant and/or subcontractors may provide public outreach and engagement services through the term of the Contract, to support the CEQA review, and NEPA review as

needed, as well as the larger outreach and engagement needs of the SFMTA. Contractor shall generally support the SFMTA project team with planning, crafting, and delivering best practices, and culturally competent outreach and engagement with stakeholder communities and the public at-large. Public outreach and engagement may progress continuously with, but mostly parallel to, the environmental review scope.

Contractor shall use the SFMTA's Public Outreach and Engagement Team Strategy (POETS) for guidance in preparing strategies, engagements, and deliverables. All Contractor work and deliverables shall be designed to meet the needs of community stakeholders while supporting the SFMTA's key policies and standards, including but not limited to SFMTA's Strategic Plan (and subsequent updates), SFMTA's Racial Equity Action Plan (and subsequent updates), and SFMTA's Brand Standards (to be provided to firm(s)).

Consultants will be expected to follow POETS and industry best practices for public outreach and engagement when completing task orders. Tasks could include but will not be limited to: preparing public engagement, outreach, and communication plans, including objectives of the plans; customizing culturally-relevant and specific materials for different audiences for outreach and engagement activities or notifications (including using different mediums and channels), including project messaging; coaching and training City staff in preparing for activities; advertising activities; identifying and recruiting people to participate in activities; leading activities; reporting on activities and projects; evaluating effectiveness of activities in relation to objectives of the plans; and maintaining and following up with stakeholders and participants.

C. Administration

During the life of the contract, the Consultant should expect to:

- Administer appropriate meetings by, among other things, identifying attendees, preparing agendas of purpose and key outcomes sought, and preparing meeting minutes (e.g., summary of major items, action items, etc.), including but not limited to kick-off meetings; check-in meetings to discuss progress, preview administrative documents, and discuss city comments on administrative documents; and public scoping meetings and public hearings.
- Provide status reports describing work completed by Task.
- Determine appropriate format of deliverables with SFMTA or Planning (e.g., geodatabase, pdf, word, track changes, etc.) and if electronic and physical, if necessary, of all draft and final deliverables, including but not limited to work plans, meeting minutes, technical studies, and publicly distributed documents.

For all tasks under the contract, all materials intended to be posted on the SFMTA website or provided to the SFMTA Board must also be Federal Section 508 compliant (accessible for all users), including, but not limited to, descriptions of all graphics in text format and all information usable with common screen reading software. The City and County of San Francisco recognizes its obligation under the Americans with Disabilities Act (ADA) and other disability civil rights laws to provide equal access to all City and County programs and activities.

Environmental documents and notices published for public use for this project shall follow the enhanced Web Accessibility Standards & Guidelines.

D. Reserved. (Sections Applicable to Goods)

2. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

3. Reports

Contractor shall submit written reports as requested by the SFMTA. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

4. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be Wade Wietgreffe at wade.wietgreffe@sfmta.com.

Appendix B Calculation of Charges

The Federal Transit Administration (FTA) will require all information as to how the fully burdened rates are derived, and the contractor team should be ready to provide that information upon request.

Cost must comply with the Federal Acquisition Regulation (FAR), 48 CFR Part 31 (Federal cost principles for for-profit entities)

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

Firm	Name	Employee Status	Position/Classification (Work to be Performed)	Education/Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
ICF Jones & Stokes, Inc.	John Cook	Remote	Environmental Review Project Manager	Masters in City Planning, 25 years	\$80.26	\$197.44
ICF Jones & Stokes, Inc.	Shilpa Trisal	Remote	Task Order Manager	Masters in Community Planning 20 years	\$80.76	\$198.67
ICF Jones & Stokes, Inc.	Heidi Mekkelson	FTE	Task Order Manager	MSL, 20 years	\$89.69	\$252.93
ICF Jones & Stokes, Inc.	Jennifer Andersen	Remote	Task Order Manager	BA, 13 years	\$57.78	\$142.14
ICF Jones & Stokes, Inc.	Jessica Viramontes	FTE	Task Order Manager	MS, 16 years	\$66.99	\$188.91
ICF Jones & Stokes, Inc.	Jennifer Stock	Remote	Senior Landscape Architect	BLA, 24 years	\$60.24	\$148.19
ICF Jones & Stokes, Inc.	Laura Yoon	On-Call	Air Quality Lead	MA, 15 years	\$84.53	\$142.01
ICF Jones & Stokes, Inc.	Darrin Trageser	Remote	Senior Air Quality and Climate Change Specialist	MS, 9 years	\$60.00	\$147.60
ICF Jones & Stokes, Inc.	Pierre Glaiuze	Remote	Senior Air Quality and Climate Change Specialist	BS, 8 years	\$62.50	\$153.75
ICF Jones & Stokes, Inc.	Ross Wilming	FTE	Biology Lead	BS, 19 years	\$49.26	\$138.91
ICF Jones & Stokes, Inc.	Lisa Webber	FTE	Senior Botanist	MS, 34 years	\$59.64	\$168.18
ICF Jones & Stokes, Inc.	Amy Poopatanapong	Remote	Senior Conservation Planner	MS, 15 years	\$54.34	\$133.68
ICF Jones & Stokes, Inc.	Allison Lyons Medina	FTE	Historic Preservation Lead	MS, 23 years	\$48.08	\$135.59

Firm	Name	Employee Status	Position/Classification (Work to be Performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
ICF Jones & Stokes, Inc.	Zachary Comejo	FTE	Senior Environmental Planner	Masters of Conservation, 6 years	\$43.00	\$121.26
ICF Jones & Stokes, Inc.	Ellen Unsworth	FTE	Senior Environmental Planner	MS, 24 years	\$53.78	\$151.66
ICF Jones & Stokes, Inc.	Patrick Maley	FTE	Senior Environmental Planner	MPA, 15 years	\$47.63	\$134.32
ICF Jones & Stokes, Inc.	Mario Barrera	Remote	Senior Environmental Planner	BS, 19 years	\$47.63	\$117.17
ICF Jones & Stokes, Inc.	Katrina Sukola	On-Call	Senior Environmental Scientist	MS, 19 years	\$41.26	\$69.32
ICF Jones & Stokes, Inc.	Elizabeth Foley	Remote	Noise Lead	MA, 14 years	\$62.10	\$152.77
ICF Jones & Stokes, Inc.	N/A	FTE	Managing Consultant (Environmental Review Project Manager/Task Order Manager)	MA, 15+ years typ.	\$75.00 - \$90.00	\$211.50 - \$253.80
ICF Jones & Stokes, Inc.	N/A	Remote	Managing Consultant (Environmental Review Project Manager/Task Order Manager)	MA, 15+ years typ.	\$75.00 - \$90.00	\$184.50 - \$221.40
ICF Jones & Stokes, Inc.	N/A	FTE	Senior Consultant III	MA, 10+ years typ.	\$70.00 - \$80.00	\$197.40 - \$225.60
ICF Jones & Stokes, Inc.	N/A	Remote	Senior Consultant III	MA, 10+ years typ.	\$70.00 - \$80.00	\$172.20 - \$196.80
ICF Jones & Stokes, Inc.	N/A	FTE	Senior Consultant II	BA, 5+ years typ.	\$60.00 - \$70.00	\$169.20 - \$197.40
ICF Jones & Stokes, Inc.	N/A	Remote	Senior Consultant II	BA, 5+ years typ.	\$60.00 - \$70.00	\$147.60 - \$172.20
ICF Jones & Stokes, Inc.	N/A	FTE	Senior Consultant I	BA, 5+ years typ.	\$50.00 - \$65.00	\$141.00 - \$183.30
ICF Jones & Stokes, Inc.	N/A	Remote	Senior Consultant I	BA, 5+ years typ.	\$50.00 - \$65.00	\$123.00 - \$159.90
ICF Jones & Stokes, Inc.	N/A	FTE	Assoc Consultant III	BA, 5+ years typ.	\$50.00 - \$60.00	\$141.00 - \$169.20
ICF Jones & Stokes, Inc.	N/A	Remote	Assoc Consultant III	BA, 5+ years typ.	\$50.00 - \$60.00	\$123.00 - \$147.60
ICF Jones & Stokes, Inc.	N/A	FTE	Assoc Consultant II	BA, 2+ years typ.	\$40.00 - \$55.00	\$112.80 - \$155.10
ICF Jones & Stokes, Inc.	N/A	Remote	Assoc Consultant II	BA, 2+ years typ.	\$40.00 - \$55.00	\$98.40 - \$135.30
ICF Jones & Stokes, Inc.	N/A	FTE	Assoc Consultant I	BA, 1+ years typ.	\$35.00 - \$50.00	\$98.70 - \$141.00
ICF Jones & Stokes, Inc.	N/A	Remote	Assoc Consultant I	BA, 1+ years typ.	\$35.00 - \$50.00	\$86.10 - \$123.00
ICF Jones & Stokes, Inc.	N/A	FTE	Assistant Consultant	BA typ.	\$30.00 - \$45.00	\$84.60 - \$126.90
ICF Jones & Stokes, Inc.	N/A	Remote	Assistant Consultant	BA typ.	\$30.00 - \$45.00	\$73.80 - \$110.70
ICF Jones & Stokes, Inc.	N/A	FTE	Administrative Technician	AA, 2+ years typ.	\$25.00 - \$55.00	\$70.50 - \$155.10

Firm	Name	Employee Status	Position/Classification (Work to be Performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
ICF Jones & Stokes, Inc.	N/A	Remote	Administrative Technician	AA, 2+ years typ.	\$25.00 - \$55.00	\$61.50 - \$135.30
ICF Jones & Stokes, Inc.	N/A	FTE	Technician	AA, 2+ years typ.	\$25.00 - \$35.00	\$70.50 - \$98.70
ICF Jones & Stokes, Inc.	N/A	Remote	Technician	AA, 2+ years typ.	\$25.00 - \$35.00	\$61.50 - \$86.10
Advant Consulting	José I. Farrán, PE	N/A	Senior Transportation Planner and Senior Traffic Engineer	Master of Engineering, 38 years	\$240.00**	\$240.00
Albion Environmental, Inc.	Sarah Peelo	N/A	Principal	PhD, 25 years	\$46.83	\$131.12
Albion Environmental, Inc.	N/A	N/A	Principal	--	\$35.56 - \$49.21	\$99.57 - \$137.79
Albion Environmental, Inc.	N/A	N/A	Senior Anthropologist	--	\$28.44 - \$40.91	\$79.63 - \$114.55
Albion Environmental, Inc.	N/A	N/A	Senior Archaeologist	--	\$28.44 - \$43.28	\$79.63 - \$121.18
Albion Environmental, Inc.	N/A	N/A	Archaeologist	--	\$26.08 - \$33.19	\$73.02 - \$92.93
Albion Environmental, Inc.	N/A	N/A	Archaeological Technician	--	\$21.35 - \$25.50	\$59.78 - \$71.40
Albion Environmental, Inc.	N/A	N/A	GIS/Graphics	--	\$26.08 - \$38.53	\$73.02 - \$107.88
Albion Environmental, Inc.	N/A	N/A	Administrative	--	\$20.14 - \$34.97	\$56.39 - \$97.92
Archeo-Tec	Allen Pastron	N/A	Principal Investigator	PhD, 52 years	\$97.50	\$195.00
Archeo-Tec	N/A	N/A	Principal Investigator	--	\$97.50	\$195.00
Archeo-Tec	N/A	N/A	Research Associate	--	\$62.50	\$125.00
Archeo-Tec	N/A	N/A	Research Assistant	--	\$47.50	\$95.00
Baseline	Cem Atabek	N/A	Project Manager/Senior Environmental Engineer	BS, 17 years	\$71.00	\$197.13
Baseline	Patrick Sutton	N/A	Principal Environmental Engineer	MS, 20 years	\$76.00	\$211.01
Baseline	N/A	N/A	Principal Environmental Engineer	--	\$80.00	\$222.12
Baseline	N/A	N/A	Senior Environmental Engineer	--	\$75.00	\$208.24
Baseline	N/A	N/A	Senior Geologist	--	\$75.00	\$208.24
Baseline	N/A	N/A	Senior Environmental Scientist	--	\$75.00	\$208.24
Baseline	N/A	N/A	Senior Field Geologist	--	\$70.00	\$194.36
Baseline	N/A	N/A	Project Environmental Engineer	--	\$65.00	\$180.47
Baseline	N/A	N/A	Project Geologist	--	\$65.00	\$180.47

Firm	Name	Employee Status	Position/Classification (Work to be Performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
Baseline	N/A	N/A	Project Environmental Scientist	--	\$65.00	\$180.47
Baseline	N/A	N/A	Senior Staff Environmental Engineer	--	\$60.00	\$166.59
Baseline	N/A	N/A	Senior Staff Geologist	--	\$60.00	\$166.59
Baseline	N/A	N/A	Senior Staff Environmental Scientist	--	\$60.00	\$166.59
Baseline	N/A	N/A	Staff Environmental Engineer	--	\$55.00	\$152.71
Baseline	N/A	N/A	Staff Geologist	--	\$55.00	\$152.71
Baseline	N/A	N/A	Staff Environmental Scientist	--	\$55.00	\$152.71
Baseline	N/A	N/A	Project/Contract Administration	--	\$55.00	\$152.71
Baseline	N/A	N/A	Word/Data Processing	--	\$50.00	\$138.83
Baseline	N/A	N/A	Graphics	--	\$50.00	\$138.83
Circlepoint	Ivy Morrison	N/A	Principal In Charge	MA, 28 years	\$87.23	\$262.99
Circlepoint	Regina Merrill	N/A	Project Manager	MA, 6 years	\$51.00	\$154.17
Circlepoint	N/A	N/A	Senior Managing Principal (max)		\$124.00	\$374.84
Circlepoint	N/A	N/A	Managing Principal (max)		\$117.00	\$353.69
Circlepoint	N/A	N/A	Principal (max)		\$103.00	\$311.36
Circlepoint	N/A	N/A	Senior Project Manager (max)		\$78.00	\$235.80
Circlepoint	N/A	N/A	Project Manager (max)		\$58.00	\$175.34
Circlepoint	N/A	N/A	Senior Associate (max)		\$48.00	\$145.11
Circlepoint	N/A	N/A	Associate (max)		\$44.00	\$133.01
Circlepoint	N/A	N/A	Assistant/Coordinator (max)		\$40.00	\$120.92
Circlepoint	N/A	N/A	Art Director (max)		\$60.00	\$181.37
Circlepoint	N/A	N/A	Senior Web/Graphic Designer (max)		\$55.00	\$166.27
Circlepoint	N/A	N/A	Senior Project Accountant (max)		\$55.00	\$166.27
Circlepoint	N/A	N/A	Clerical/Admin (max)		\$45.00	\$136.04

Firm	Name	Employee Status	Position/Classification (Work to be Performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
Fehr & Peers	Neil Smolen	N/A	Project Manager	MS, 10 years	\$87.16	\$244.92
Fehr & Peers	Matt Goyne, PE	N/A	Principal-in-Charge	MS, 15 years	\$94.09	\$264.39
Fehr & Peers	N/A	N/A	Principal		\$88.46 - \$137.98	\$248.57 - \$387.72
Fehr & Peers	N/A	N/A	Associate		\$69.23 - \$96.15	\$194.54 - \$270.18
Fehr & Peers	N/A	N/A	Engineer/Planner		\$49.04 - \$63.22	\$137.80 - \$177.65
Fehr & Peers	N/A	N/A	Technician		\$39.66 - \$53.37	\$111.44 - \$149.97
Fehr & Peers	N/A	N/A	Administrative Assistant		\$30.29 - \$52.40	\$85.11 - \$147.24
Fehr & Peers	N/A	N/A	Intern		\$33.00 - \$35.00	\$92.73 - \$98.35
Groundwork Planning & Preservation	Gretchen Hilyard Boyce	N/A	Principal/Cultural Resource Specialist	MS, 23 years	\$190.00**	\$190.00
Groundwork Planning & Preservation	N/A	N/A	Principal	--	\$190.00**	\$190.00
Groundwork Planning & Preservation	N/A	N/A	Project Manager	--	\$165.00**	\$165.00
Groundwork Planning & Preservation	N/A	N/A	Senior Historian	--	\$140.00**	\$140.00
Groundwork Planning & Preservation	N/A	N/A	Historian	--	\$110.00**	\$110.00
Groundwork Planning & Preservation	N/A	N/A	Associate	--	\$85.00**	\$85.00
LCW	Luba Wyznyckyj	N/A	Principal	Master of Urban Planning, 39 years	\$240.00**	\$240.00
Panorama Environmental, Inc.	Whitney Broeking	N/A	Project Manager	BA, 13 years	\$63.94	\$157.96
Panorama Environmental, Inc.	Angie Alexander	N/A	Visual Resource Specialist	MA, 19 years	\$87.50	\$216.17
Panorama Environmental, Inc.	N/A	N/A	Director	--	\$87.50	\$216.17
Panorama Environmental, Inc.	N/A	N/A	Senior Manager	--	\$72.11	\$178.15
Panorama Environmental, Inc.	N/A	N/A	Senior Project Manager	--	\$64.90	\$160.34
Panorama Environmental, Inc.	N/A	N/A	Senior Planner	--	\$60.10	\$148.48
Panorama Environmental, Inc.	N/A	N/A	Environmental Planner II	--	\$49.52	\$122.34

Firm	Name	Employee Status	Position/Classification (Work to be Performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
Panorama Environmental, Inc.	N/A	N/A	Environmental Planner I	--	\$43.26	\$106.87
Panorama Environmental, Inc.	N/A	N/A	Contract Manager	--	\$48.08	\$118.78
Panorama Environmental, Inc.	N/A	N/A	Visual Resource Specialist	--	\$60.00	\$148.23
Prevision Design	Adam Phillips	N/A	Project Manager	Master of Architecture, 23 years	\$290.00**	\$290.00
Prevision Design	N/A	N/A	Principal	--	\$290.00**	\$290.00
Prevision Design	N/A	N/A	Administrative	--	\$85.00**	\$85.00
RWDI	Shelby Ness	N/A	Senior Project Manager	BA, 13 years	\$78.80	\$285.00
RWDI	Neetha Vasan	N/A	Specialist Engineer	Master of Applied Science, 12 years	\$56.60	\$204.00
RWDI	Hanqing Qu	N/A	Technical Director	PhD, 16 years	\$72.40	\$261.00
Wilson Ihrig	Deborah Jue	N/A	Principal/Noise and Vibration	MS, 33 years	\$85.80	\$244.53
Wilson Ihrig	Derek Watry	N/A	Principal/Noise and Vibration	MS, 32 years	\$85.80	\$244.53
Wilson Ihrig	N/A	N/A	Principal Engineer	--	\$106.45	\$303.38
Wilson Ihrig	N/A	N/A	Principal	--	\$80.00	\$228.00
Wilson Ihrig	N/A	N/A	Associate Principal	--	\$65.00	\$185.25
Wilson Ihrig	N/A	N/A	Senior Consultant	--	\$52.00	\$148.20
Wilson Ihrig	N/A	N/A	Associate	--	\$45.00	\$128.25
Wilson Ihrig	N/A	N/A	Assistant	--	\$38.00	\$108.30
Wilson Ihrig	N/A	N/A	Technician	--	\$34.00	\$96.90
Wilson Ihrig	N/A	N/A	Project Assistant	--	\$34.00	\$96.90
Wilson Ihrig	N/A	N/A	Project Controls	--	\$34.00	\$96.90

***Fully Burdened Hourly Labor Billing Rate; given that the firm is a sole proprietorship and the typical size of contracts, there is no salary rate available.
Fully Burdened Hourly Labor Billing Rate = Direct Hourly Rate x Multiplier listed in Table 2*

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

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

Firm	Employee Status	Overhead (%)	Multiplier
ICF Jones & Stokes, Inc.	FTE	182.23%	2.82
ICF Jones & Stokes, Inc.	Field/Remote Office	146.07%	2.46
ICF Jones & Stokes, Inc.	On-Call	68.33%	1.68
Adavant Consulting	N/A	N/A	N/A
Albion Environmental, Inc.	N/A	180.00%	2.80
Archeo-Tec	N/A	100.00%	2.00
Baseline Environmental Consulting	N/A	177.65%	2.78
Circlepoint	N/A	202.29%	3.02
Fehr & Peers	N/A	181.39%	2.81
Groundwork Planning & Preservation	N/A	N/A	N/A
LCW Consulting	N/A	N/A	N/A
Panorama Environmental, Inc.	N/A	147.05%	2.47
Prevision Design	N/A	N/A	N/A
RWDI	N/A	261.10%	3.61
Wilson Ihrig	N/A	185.04%	2.85

Table 2b. Profit and Markup for Contractor and Subcontractor

1. Profit to be negotiated task by task ___ TBD ___ (not to exceed 7%).
2. Prime Contractor markup on labor performed by Subcontractor ___ 3% ___.

Table 3: Other direct cost (ODC) items required to complete the work described in this Agreement.

Company	Other Costs	
	Item	Cost
ICF Jones & Stokes, Inc	Mileage	IRS rate
ICF Jones & Stokes, Inc	Record Searches	At cost
ICF Jones & Stokes, Inc	Equipment Rental (GIS, noise meters)	At cost
ICF Jones & Stokes, Inc	Printing and Mailing	At cost
ICF Jones & Stokes, Inc	Court Reporter	At cost
Albion Environmental, Inc.	Per Diem	State of California rate
Albion Environmental, Inc.	Mileage	IRS rate
Albion Environmental, Inc.	All Other Expenses	At cost
Archeo-Tec (Bob's Backhoe)	Backhoe Rental	\$160/hour
Circlepoint	Black and White Prints/ Copies, In House	\$0.20+ per page, depending on paper size color prints/copies, in house
Circlepoint	Translation	\$0.27-\$0.54 per word, depending on language
Circlepoint	Interpretation	\$150-\$250 per hour
Circlepoint	Phone/Postage	At cost
Circlepoint	Mileage	Per IRS Standard Mileage Rate
Circlepoint	Online Surveys	\$60 each
Circlepoint	Project Email Account	At cost
Circlepoint	Eblasts	\$20 each
Circlepoint	Web Hosting	\$300 per year
Circlepoint	Domain	\$20-25 per year
Circlepoint	SSL Certificate	\$75 per year
Circlepoint	Subconsultant Services	3% mark up for administration

Company	Other Costs	
	Item	Cost
Circlepoint	Vendors	12% markup for administration
Circlepoint	AV/Equipment Rental	at cost
Fehr & Peers	Mileage	IRS rate
Fehr & Peers	Voice and Data Communications	At cost as a percentage of project labor
Fehr & Peers	Other reimbursable costs	At cost plus 10% for handling
Prevision Design	Auto Mileage	IRS rate

Appendix C

TASK ORDER REQUEST FORM

Task Title: <u>Enter Task Title</u> Date Initiated: <u>xx/xx/xx</u>	
Type of Request:	
<input type="checkbox"/> New Task Order- No. <u>XX</u>	
<input type="checkbox"/> Modification No. _____ (attach approved original and all modifications to date)	
Total Amount Being Requested:	<u>\$ x,xxx.xx</u>
Total approved task to date (including all mods.):	<u>\$ _____</u>
Total task amount including this request:	<u>\$ x,xxx.xx</u>
Task Start Date: <u>xx/xx/xx</u> Modification Start Date: _____	
Estimated Completion Date: <u>xx/xx/xx</u>	
Funding Source:	Proposed Task SBE Goal: <u>xxx.xx %</u>
Account: _____ Fund: _____ Dept: _____ Authority: _____	
Project: _____ Activity: _____	
Project Title: _____	
Work to be Performed:	

APPROVALS

Requested by: _____ **Date** _____
Name, Title

Approved by: _____ **Date** _____
Name, Contract Manager

Reviewed by: _____ **Date** _____
Trinh Nguyen, Manager Contracts & Procurement, Federal

Reviewed by: _____ **Date** _____
Virginia Harmon, Contract Compliance Office

Approved by: _____ **Date** _____
Division Director, Title

Proposed Staff and Budget:

NAME	HOURS	LOADED RATE	LABOR COST	ODCS	TOTALS
Total Services					
Profit					
Other Direct Costs (ODCs)					

Grand Total This Task: \$000,000

Notes:

Approved by Requestor:

Signature :

Date:

Appendix D

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

I. DEFINITIONS

- A. **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. **Contractor** means the individual or entity awarded a third-party contract financed in whole or in part with Federal assistance originally derived from FTA.
- C. **Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.
- D. **Federal Transit Administration (FTA)** is an operating administration of the U.S. DOT.
- E. **FTA Directive** includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.
- F. **Grant Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- G. **Government** means the United States of America and any executive department or agency thereof.
- H. **Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.
- I. **Recipient** means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.
- J. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- K. **Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

- L. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.
- M. **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

- A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

IV. DEBARMENT AND SUSPENSION

- A. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:
 - a) Debarred from participation in any federally assisted Award;
 - b) Suspended from participation in any federally assisted Award;
 - c) Proposed for debarment from participation in any federally assisted Award;

- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

See Appendix D of Request for Proposal, Certification Regarding Debarment, Suspension, and Other Responsibility Matters

- B.** The Contractor agrees to include a provision in its lower-tier covered transactions requiring lower-tier participants to comply with the requirements of 2 CFR Part 180, Subpart C, and Part 1200, Subpart C.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- A.** The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. CIVIL RIGHTS

- A. Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the
- B.** Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- C. Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
 - 1. Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with

any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 3. **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

VII. DBE/SBE ASSURANCES

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

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

VIII. PATENT RIGHTS *(applicable to contracts for experimental, research, or development projects financed by FTA)*

- A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of

America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

- B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

IX. RIGHTS IN DATA AND COPYRIGHTS (*Applicable to contracts for planning, research, or development financed by FTA*)

- A. **Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
 - 1. **Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - 2. **Federal License.** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

- a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.
3. **FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.
4. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
5. **Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
6. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

- 7. Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- C. Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- D. Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- X. CONTRACT WORK HOURS AND SAFETY STANDARDS** (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)
- A. Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages** – The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may

be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

XI. ENERGY CONSERVATION REQUIREMENTS

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

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

- A.** The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.
- B.** The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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

- A.** Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B.** The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XIV. PRIVACY

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

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

XV. DRUG AND ALCOHOL TESTING

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XVIII. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials (*excluding* cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. “Construction materials” include an article, material, or supply that is or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall.

General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XIX. PROHIBITION AGAINST USE OF CONTRACT FUNDS FOR COVERED TELECOMMUNICATIONS EQUIPMENT

Under 2 CFR Section 216, Contractors and Subcontractors are prohibited from using Contract funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Section 889 of Public Law 115-232, covered telecommunications equipment is:
 - 1. telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - 2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - 3. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - 4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

XX. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

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

XXI. RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.
- C. Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXIII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

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

part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

XXIV. FLY AMERICA

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

XXV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

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

- A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - 1. **General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A

5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's Project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities

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

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas

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

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

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

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXVIII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

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

XXIX. SEAT BELT USE

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

XXX. LOBBYING *(To be submitted with each bid or offer exceeding \$100,000)*

Certification Regarding Lobbying required (See Appendix E of Request for Proposal).

XXXI. PROMPT PAYMENT

- A.** In accordance with SFMTA’s SBE/DBE Program, no later than three business days from the date of Contractor’s receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors unless the prime Contractor notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subcontractor. Within five working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractors.
- B.** Contractor may withhold retention from subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within 30 days of City’s payment of retention to Contractor for satisfactory completion of all work required of a subcontractor, Contractor shall release any retention withheld to the subcontractor. Satisfactory completion shall mean when all the tasks called for in the subcontract with subcontractor have been accomplished and documented as required by City. If the Contractor does not pay its subcontractor as required under the above paragraph, it shall pay interest to the subcontractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

XXXII. VETERANS EMPLOYMENT *(applicable to Capital Projects)*

As provided by 49 U.S.C. § 5325(k):

- A.** To the extent practicable, Contractor agrees that it:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital Project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and
- B. Contractor also assures that its subcontractor will:
1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital Project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

APPENDIX E

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SBE/DBE REQUIREMENTS

Architects, Engineers, Planners, and Environmental Scientists and Other Professional Services

I. POLICY

The San Francisco Municipal Transportation Agency (SFMTA), recipient of federal financial assistance from the Federal Transit Administration (FTA), is committed to and has adopted, a Small Business Enterprise (SBE) and Disadvantaged Business Enterprise (DBE) Program to implement the Disadvantaged Business Enterprise regulations in 49 C.F.R. Part 26 (the "Regulations"), issued by the Department of Transportation (DOT).

It is the policy of the SFMTA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which SBEs and DBEs can compete fairly for contracts and subcontracts relating to SFMTA's construction, procurement and professional services activities. To this end, SFMTA has developed procedures to remove barriers to SBE and DBE participation in the bidding and award process and to assist SBEs and DBEs to develop and compete successfully outside of the SBE/DBE program. In connection with the performance of this contract, the Contractor will cooperate with SFMTA in meeting these commitments and objectives.

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

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

A. Applicability

Under 49 CFR Sections 26.3 and 26.51, and in response to the Federal Transit Administration's (FTA) March 23, 2006, publication of the Department of Transportation's (DOT) guidance concerning the federal DBE program that applies to grant recipients within the Ninth Circuit, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement race-neutral means of facilitating DBE participation in instances where the SFMTA

lacks evidence of discrimination or its effects on DBEs. Per DOT requirements, the SFMTA conducted a disparity study to determine if substantial disparities exist in the utilization of DBEs in the SFMTA's federally existed contracts. The results of the study concluded that for the SFMTA's professional services contracts, DBEs owned by women are underutilized, and DOT has authorized the SFMTA to establish contract goals for women-owned DBEs. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by DOT federal financial assistance.

B. Objectives

The objectives of this program are to:

1. Remove barriers to SBE and DBE participation in the bidding, award and administration of SFMTA contracts;
2. Assist SBEs and DBEs to develop and compete successfully outside of the Program;
3. Ensure that the Program is narrowly tailored in accordance with 49 C.F.R. Part 26;
4. Ensure that only SBEs and DBEs meeting the eligibility requirements are allowed to participate as SBEs and DBEs;
5. Identify business enterprises that are qualified as SBEs and DBEs and are qualified to provide SFMTA with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. Develop communications programs and procedures which will acquaint prospective SBEs and DBEs with SFMTA's contract procedures, activities and requirements and allow SBEs and DBEs to provide SFMTA with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
7. Administer the Program in close coordination with the various divisions within SFMTA so as to facilitate the successful implementation of this Program.

C. Administration of Program

The Director of Transportation is responsible for adherence to this policy. The DBE Liaison Officer (DBELO) shall be responsible for the development, implementation and monitoring of this program. It is the expectation of the Municipal Transportation Board of Directors and the Director of Transportation that all SFMTA personnel shall adhere to the provisions and the spirit of this program.

D. Prohibited Discrimination

The SFMTA shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the basis of (the fact or perception of a person's) race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation,

gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

E. The SFMTA shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals in the groups or categories or having the characteristics listed above.

F. The SFMTA has signed the federal assurances regarding nondiscrimination required under 49 C.F.R. Section 26.13. See III.D (Contract Assurances) for requirements of Contractor and Subconsultants.

II. DEFINITIONS

Any terms used in SFMTA's SBE/DBE Program that are defined in 49 C.F.R. Section 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations.

Disadvantaged Business Enterprise (DBE): A DBE is a for-profit, small business concern (1) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which 51% of the stock is owned by one or more socially and economically disadvantaged individuals; (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (3) that is certified under the California Unified Certification Program.

Small Business Enterprise (SBE): An SBE is a for-profit, small business concern with a three-year average gross revenue not exceeding current SBA size standards appropriate for its type of work and is either verified eligible by the SFMTA or the State of California's Small Business Program with the Department of General Services, the California Unified Certification Program with a U.S. Department of Transportation recipient, or the City and County of San Francisco's LBE program with the Contract Monitoring Division.

To be eligible to participate as a DBE or SBE on this contract, the total average gross revenue thresholds for the past five years must not exceed the current SBA business size standard appropriate to the type(s) of work the firm seeks to perform. Even if it meets the appropriate SBA size standard, a firm is not eligible if it (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years, in excess of \$30.40 million. These figures may be updated periodically by the DBE/SBE program.

III. SBE/DBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE and DBE Participation Goals

Contractor has committed to achieving 20% SBE and 5% Woman Owned DBE participation for this contract.

B. Determining the Amount of SBE and DBE Participation

The SFMTA strongly encourages the prime contractor to make every good faith effort to include SBEs and DBEs to perform meaningful work in all aspects of the projects. To accomplish this goal, the following guidance is provided:

1. SBE and DBE Participation

SBE and DBE participation includes contracts (other than employee contracts) with SBEs and DBEs for any goods or services specifically required for the completion of the work under the Agreement. An SBE or DBE may participate as a prime contractor/consultant, subcontractor/consultant, joint venture partner with a prime or consultant, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement.

2. Function

SBEs and DBEs must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work. However, an SBE or DBE may contract out a portion of the work if it is considered to be a normal industry practice. If an SBE or DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE or DBE shall be presumed not to be performing a commercially useful function.

3. Determining the amount of SBE and DBE Participation

SBE and DBE participation includes that portion of the contract work actually performed by a certified SBE or DBE with its own forces. An SBE or DBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by the contract.

An SBE's or DBE's participation can only be counted if it is performing a commercially useful function. An SBE or DBE is performing a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE or DBE is not responsible for at least 30 percent of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function.

The Contractor shall determine the amount of SBE and DBE participation for each SBE and DBE performing work on the contract in terms of both the total value of the work in dollars and the percentage of the total contract bid price. The Contractor shall also determine the total amount of SBE and DBE participation for the entire

contract. The Contractor shall count SBE and DBE participation according to the following guidelines:

SBE or DBE Prime Contractor

Count the entire dollar amount of the work performed or services provided by the SBE's or DBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE or DBE participation by the SBE or DBE Prime Contractor.

SBE or DBE Subcontractor

Count the entire amount of the work performed or services provided by the SBE's or DBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Contractor) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE or DBE subcontractor to another firm as SBE or DBE participation by said SBE or DBE subcontractor. If the work has been subcontracted to another SBE or DBE, it will be counted as SBE or DBE participation by that other SBE or DBE.

SBE or DBE Joint Venture Partner

Count the portion of the work that is performed solely by the SBE's or DBE's forces or if the work is not clearly delineated between the SBE or DBE and the joint venture partner, count the portion of the work equal to the SBE's or DBE's percentage of ownership interest in the joint venture.

SBE or DBE Regular Dealer

Count 60 percent of the costs of materials and supplies obtained from an SBE or DBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business (except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business). This applies whether an SBE or DBE is a prime contractor or subcontractor.

Other SBEs or DBEs

Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from an SBE or DBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

C. Submission of Certification for SBEs and DBEs

All firms wishing to receive credit for participation under the SFMTA's SBE/DBE Program must be certified as bona fide SBEs or DBEs with the SFMTA. This requires either

submission of: (1) the completed certification applications for either SBEs, DBEs, or LBEs, or (2) submission of the SFMTA's small business verification application. For information regarding where to obtain applications for these certifications, please contact the SFMTA Contract Compliance Office at:

San Francisco Municipal Transportation Agency
Contract Compliance Office
One South Van Ness Avenue, 6th floor
San Francisco, California 94103
todd.senigar@sfmta.com

D. Contract Assurances

The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. 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 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 the recipient deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

E. Use of SBE and DBE Firms

The Consultant shall use the specific SBEs and DBEs listed to perform the work and supply the materials for which each is listed unless the Consultant obtains CCO's prior written consent. Unless prior written consent by CCO is provided, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE or DBE.

F. Substitution of Subconsultants and Suppliers

The Consultant shall not terminate an SBE or DBE subconsultant or supplier for convenience and then perform the work with its own forces. Before requesting the termination and/or substitution of an SBE or DBE subconsultant, the Consultant must give notice in writing to the SBE or DBE subconsultant, with a copy to CCO, of its intent to request to terminate and/or substitute, and the reason for the request. The Consultant must give the SBE or DBE five days to respond to the notice and advise CCO and the Consultant of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Consultant's request should not be approved. CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the SFMTA Board of Directors.

When an SBE or DBE subconsultant is terminated as provided in this section, or fails to complete its work on the contract for any reason, the Consultant shall make good faith efforts to find another SBE or DBE subconsultant to substitute for the original SBE or DBE. These good faith efforts shall be directed at finding another SBE or DBE to perform at least the same amount

of work under the contract as the SBE or DBE that was terminated, to the extent needed to meet the established SBE or DBE contract goal.

G. Addition of Subconsultants and Suppliers

The Consultant shall notify CCO prior to any addition of an SBE/DBE or non-SBE/non-DBE subconsultant or supplier to the project. Submit SBE/DBE SFMTA Form No. 4 for each new SBE or DBE subconsultant or supplier. Any new SBE or DBE subconsultant or supplier approved by CCO also must submit SFMTA SBE/DBE Form No. 5.

H. Prompt Payment to Subcontractors

In accordance with SFMTA's SBE/DBE Program, no later than three business days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subconsultants unless the prime consultant notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant. Within five working days of such payment, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

The CO has implemented an online contract compliance monitoring system, B2GNow. If this contract is awarded after implementation of B2GNow, rather than completing and submitting SBE/DBE Form No. 7, the Consultant shall enter its subconsultant payment information into the B2GNow system. Subconsultants are then required to acknowledge payment from the Consultant online using the B2GNow system. B2GNow system training will be made available to the Consultant and its subconsultants.

Consultant may withhold retention from subconsultants if City withholds retention from Consultant. Should retention be withheld from Consultant, within 30 days of City's payment of retention to Consultant for satisfactory completion of all work required of a subconsultant, Contractor shall release any retention withheld to the subconsultant. Satisfactory completion shall mean when all the tasks called for in the subcontract with subconsultant have been accomplished and documented as required by City.

If the Consultant does not pay its subconsultant as required under the above paragraph, it shall pay interest to the subconsultant at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

IV. MONITORING AND COMPLIANCE

A. SBE and DBE Records; Reporting Requirements

The Contractor shall maintain records of all SBE and DBE participation in the performance of the contract including subcontracts entered into with certified SBEs and DBEs and all materials purchased from certified SBEs and DBEs.

The Contractor shall submit SBE and DBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE and DBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE and DBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Contractor shall submit a final summary SBE/DBE report to the CCO.

B. Noncompliance; Administrative Remedies

SFMTA will implement appropriate mechanisms to ensure that its prime contractors and subcontractors comply with SBE/DBE Program regulatory requirements. SFMTA will apply legal and contractual remedies available under federal, state and local law.

SFMTA will also include a monitoring and enforcement mechanism to verify that the work committed to SBEs and DBEs at contract award is actually performed by the SBEs and DBEs. This mechanism will provide for a running tally of actual SBE and DBE attainments and include a provision ensuring that SBE and DBE participation is credited toward overall or contract goals only when payments are actually made to SBE and DBE firms.

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

**Agreement between the City and County of San Francisco and
Environmental Science Associates (ESA)
for As-Needed Environmental Analysis Services and Public
Outreach and Engagement for the Building Progress Program**

Contract No. SFMTA-2024-79-FTA

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

**Agreement between the City and County of San Francisco and
Environmental Science Associates (ESA)
Contract No. SFMTA-2024-79-FTA**

This Agreement is made as of _____, in the City and County of San Francisco (City), State of California, by and between Environmental Science Associates (ESA) (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA wishes to procure from Contractor assistance with: (1) environmental analysis services in accordance with the California Environmental Quality Act (CEQA), and the National Environmental Policy Act (NEPA), as needed, and all relevant and required technical reports and associated materials; and (2) public engagement and outreach primarily related to the SFMTA's Building Progress Program.

B. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) No. SFMTA-2023-22-FTA issued on January 30, 2024, pursuant to which City selected Contractor as one of the highest-qualified scorers.

C. Contractor has committed to achieving Small Business Enterprise (SBE) participation of 20% and Woman-Owned Disadvantaged Business Enterprise (DBE) participation of 5% for this Agreement.

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

E. The City's Civil Service Commission approved Contract number 49788 - 22/23 for this Agreement on October 17, 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, covering the performance of the Work and furnishing of labor, materials, equipment, tools, and services, including Work incidental to the procurement, to include the Technical Specifications (if any), all Conformed Contract Documents, the Contract bonds or other security all attached appendices, any future amendments, and all applicable City Ordinances and Mandatory City Requirements that are 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” 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. City Data includes, without limitation, Confidential Information.

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

1.8 “Confidential Information” means confidential, City information including, but not limited to, personal identifiable information (PII), protected health information (PHI), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M). Confidential Information includes, without limitation, city Data.

1.9 “Conformed Contract Documents” Contract documents revised to incorporate all addenda, and information included in the Contractor's Proposal and accepted by the City.

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

1.11 “Contract Modification” means a written 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.

1.12 “Contractor” or “Consultant” means **Environmental Sciences Associates (ESA)**, 575 Market Street, Suite 3700, San Francisco, California 94105.

1.13 “Controller” means the Controller of the City.

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

1.15 “Deliverables” means Contractor’s or its Subcontractors’ work product, including any partially completed work products and related materials, 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.

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

1.17 “Disadvantage 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.

1.18 “Effective Date” means the date upon which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1. In the case of a task order contract, the “Effective Date” means the date the Director of Transportation executes the Contract.

1.19 “Equipment” means the hardware, computers, servers, and other components, diagnostic and simulation tools, spare parts and other parts and electronic, mechanical or electrical components to be supplied by Contractor under this Agreement.

1.20 “FTA” means the Federal Transit Administration.

1.21 “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.

1.22 “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.

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

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

1.25 “Proposal” means the technical and management information and prices submitted by Contractor in response to the RFP.

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

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

1.28 “Services” or “Work” 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.

1.29 “Small Business Enterprise” or “SBE” means a for-profit, small business concern with a three-year average gross revenue that do not exceed the thresholds set forth in Appendix A, Section III.B and either: 1) is certified under any of the following programs: the State of California's Small Business Program with the Department of General Services (State Program), the City and County of San Francisco's LBE Program (City Program), or the California Unified Certification Program (Federal DBE program), or 2) has received written confirmation from CCO that it meets the SFMTA’s program eligibility requirements.

1.30 “Subconsultant” or “Subcontractor” means any firm under contract to the Contractor, or any lower-tier party subcontractor engaged by the Subcontractor, for services under this Agreement.

1.31 “Task Order” means a written directive from the SFMTA to the Contractor to perform specified work, issued under the procedures described in Section 4.1 below.

Article 2 Term of the Agreement

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

2.2 The SFMTA has two options to renew the Agreement for a period of one year each. The SFMTA may exercise an option at the Director of Transportation’s sole and absolute discretion 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

3.1.1 Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, 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.

3.1.2 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).

3.2 Authorization to Commence Work. Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a Purchase Order, Task Order or notice to proceed. Such authorization may be for a partial or full scope of work.

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

3.3.1 Calculation of Charges and Contract Not to Exceed Amount. The amount of this Agreement shall not exceed (Agreement Value) Dollars (\$4,500,000). The SFMTA will pay Contractor on a task-order basis for Services it performs under this Agreement. 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 markup negotiated in accordance with Appendix B) subject to a total not to exceed amount. City shall not 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.

3.3.2 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 date of award of this Agreement. Thereafter, during the term of this Agreement, Contractor may only request to escalate these rates each anniversary of the award date of this Agreement 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. No direct hourly labor rate may be increased without prior written approval of the SFMTA and will be effective as of the date that 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 readjustment 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 the Contractor's and all Subcontractors' actual rates during the term of this Agreement to the SFMTA Project Manager. 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. The standards and requirements for compensability of Contractor's expenses under this Agreement shall be as set out in "2 CFR Part 200, 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 the City does not intend to pay the Contractor for costs under this Agreement that would not be reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments 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 markups. Compensation for travel-related expenses shall be at direct cost without mark-up. 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 approved in writing by the SFMTA in the form of a Task Order Modification. 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. Notwithstanding any other provision of this Agreement, the SFMTA will not reimburse the Consultant 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. Taxicabs and 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.

3.3.3 Submission of Invoices. For Task Orders based on a negotiated number of hours, Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed (including goods delivered, if any) in the immediately preceding month, unless a different schedule is set out in Appendix B. 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 has been satisfactorily performed.

3.3.4 Payment Limited to Satisfactory Services and Delivery of Goods. Contractor is not entitled to any payments until the SFMTA approves the goods and/or Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Services, even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by the City in such case must be replaced by Contractor without delay at no cost to the City.

3.3.5 Withhold Payments. If Contractor fails to provide 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.

3.3.6 Invoice Format. Invoices submitted 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) Description of the Services performed and/or goods delivered
- (f) PeopleSoft Supplier Name and ID
- (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 labor charges for the Task Order for which Contractor seeks payment. Profit will be for an amount not to exceed 7% of the task order
- (k) Total mark-up for current invoice period for all Subcontractor's work effort for that invoice period as an amount not to exceed 3% 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

3.3.7 Payment Terms

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

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

(c) No additional charge shall accrue against City in the event City does not make payment within any time specified by Contractor.

3.3.8 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.

3.3.9 SBE/DBE Payment and Utilization Tracking System. Contractor shall pay SBE/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.

3.3.10 Getting Paid by the City Payment for Goods and/or Services

(a) City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractors shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfgov.org).

(b) At the option of the SFMTA, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.

3.3.11 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 (FTA Requirements for Professional Service 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.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine, and make copies 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.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or Subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section.

3.6 Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services 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 compensate 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 Changes. The SFMTA may at any time, by a written order, make changes within the general scope of this Agreement. Such change shall serve to modify this Agreement to the extent necessary to execute the change as directed. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Services under this Agreement, whether changed or not changed by the order, the SFMTA shall make an

equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the Agreement accordingly. The Contractor must assert its right to an adjustment under this article within three working days from the date of receipt of the written order. Failure by Contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment. However, if the SFMTA decides that the facts justify it, the SFMTA may receive and act upon a proposal submitted at any time before final payment of the Agreement. If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, the SFMTA shall have the right to prescribe the manner of the disposition of such equipment or materials. Failure to agree to any adjustment shall be a dispute under Section 11.6, Dispute Resolution Procedure. However, nothing in this provision shall excuse the Contractor from proceeding with the Agreement as changed.

4.3 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). Contractor time spent managing or overseeing work performed by Subcontractors will not be compensable.

4.3.1 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.

4.3.2 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.

4.3.3 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 SBE/DBE forms, and administrative 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 7% of Contractor's estimated direct hourly labor rates and overhead costs; and
- For work performed by all Subcontractors, total mark-up for Contractor on Subcontractor's work effort as 3% of Subcontractor's total labor charges (does not include Other Direct Costs (ODCs)).

4.3.4 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 which shall be consistent with Section 3.3.1 above.

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

4.3.6 Subcontracting Requirements. The CCO will review the final negotiated Task Order scope and schedule to determine the percentage of SBE subcontracting participation for the specific Task Order. The SBE subcontracting percentage assigned to each Task Order shall be tracked by the CCO as part of the overall SBE subcontracting participation requirement set forth in the Agreement. The Contractor must in good faith comply with the following:

(a) The individual SBE subcontracting percentage set for each Task Order.

(b) The overall SBE subcontracting participation requirement established for the entire project (which includes the commitments the Contractor made to each

of its listed SBE Subcontractors at time of proposal). See Section 10.6 Small Business Enterprise Program for the overall SBE subcontracting participation requirement established for this project.

4.3.7 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.

4.3.8 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.

4.3.9 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.

4.3.10 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.

4.4 Qualified Personnel. Contractor represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. 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 sufficient resources for timely completion within the project schedule. The SFMTA reserves the right to require the Contractor to reassign any individual on the Contractor's project team if the SFMTA is unsatisfied with that person's performance or that person fails to demonstrate the required qualifications or expertise. The SFMTA reserves the right to review and approve any replacement of team members, and the right to reject invoices submitted related to work performed by replacement team members that the SFMTA did not approve.

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.

4.5 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.

4.6 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.

4.7 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 4.3.3 above.

4.8 Subcontracting

4.8.1 Contractor may subcontract portions of the Services only upon prior written approval of the SFMTA. 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.

4.8.2 City’s execution of this Agreement constitutes its approval of the Subcontractors listed below.

- Adavant Cosulting
- AEW Engineering, Inc.
- Fehr & Peers
- Forget Me Not History LLC
- HNTB Corporation
- InkeDesign Consulting
- InterEthnica
- LCW Consulting
- Natalie Macris
- PreVision Design
- RWDI
- Wilson Ihrig

4.9 Independent Contractor; Payment of Employment Taxes and Other Expenses

4.9.1 Independent Contractor. For the purposes of this Section 4.9, “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 is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required 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 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 is liable for its acts and omissions. 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 of its agents or employees. 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, is not performing in accordance with the requirements of this Section, 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 warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.9.2 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 4.9.2 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 hold 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.

4.10 Assignment. The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise, transferred unless first approved by the SFMTA by written instrument executed and in the same manner as this Agreement. Any purported Assignment made in violation of this provision shall be null and void.

4.11 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.

4.12 Reserved. (Liquidated Damages)

4.13 Reserved. (Performance Bond)

4.14 Reserved. (Fidelity Bond)

4.15 Reserved. (Emergency - Priority 1 Service)

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.

(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) Professional Liability Coverage, applicable to Contractor's profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Reserved. (Technology Errors and Omissions Liability Coverage)

(f) Reserved. (Cyber and Privacy Coverage)

(g) Reserved. (Pollution Liability Coverage)

5.1.2 Additional Insured

(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) The Commercial Automobile Liability Insurance policy must be endorsed to include (i) Auto Pollution Additional Insured Endorsement naming as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

5.1.3 Waiver of Subrogation. 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

(a) The Commercial General 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.

(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) The Pollution 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.

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 including additional insured and waiver of subrogation status, as required, with insurers with ratings comparable to A-, VIII or higher that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(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 and waive subrogation in favor of the City, where required.

5.2 Indemnification

5.2.1 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 liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, 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 personal 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; except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Contractor, its Subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

5.2.2 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.

5.2.3 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.

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

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

5.2.6 Under no circumstance will City indemnify or hold harmless Contractor.

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 (CALCULATION OF CHARGES AND CONTRACT NOT TO EXCEED AMOUNT) 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 San Francisco Administrative Code Section 23.39, 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 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 (Notice of Termination). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective (Termination Date).

8.1.2 Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the 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 on and after the Termination Date.

(b) Cancelling all existing orders and subcontracts by the Termination Date, 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 cancelled. 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 cancellation of such orders and subcontracts.

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

(e) Completing performance of any Services that the SFMTA requires Contractor to be completed prior to the Termination Date.

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

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

(a) The reasonable cost to Contractor, without profit, for all Services provided prior to the Termination Date, for which the SFMTA has not already made 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 and returning material or equipment, 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 such materials and not otherwise recovered by or credited to the SFMTA, and any other appropriate credits to the SFMTA against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its Subcontractors after the Termination Date, 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 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
4.10	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws
Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default 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 Default Remedies. 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 in accordance with Article 11.

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

8.4 Rights and Duties upon Termination or Expiration

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

3.3.4	Payment Limited to Satisfactory Services and Delivery of Goods
3.3.11(a)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
8.2.2	Default Remedies
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, any partially-completed Deliverables, and related materials, shall become the property of and will be transmitted to City. Unless expressly authorized in this writing by the SFMTA, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Works for Hire. All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of the City. If any such Deliverables are ever determined not to be works for hire under federal 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 its Subcontractors. With City's prior written approval, Contractor and its Subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of this Agreement.

Article 10 Additional Requirements Incorporated by Reference

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

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

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

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Labor and Employment Code Article 141 (formerly 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 Article 141. Information about and the text of Article 141 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 Article 141, 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 San Francisco Labor and Employment Code Articles 131 and 132 (formerly Chapters 12B and 12C of the San Francisco Administrative Code). Contractor shall incorporate by reference in all subcontracts the provisions of Sections Articles 131.2(a), 131B.2(c)-(k), and 131C.3 of the San Francisco Labor and Employment Code and shall require all Subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131B and 132.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Article 131.2 (formerly San Francisco Administrative Code 12B.2) applies to this Agreement. 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 Labor and Employment Code Article 131.2.

10.5.3 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.

10.6 Small Business Enterprise Program

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

10.6.2 Compliance with SBE Program. Contractor shall comply with the SBE 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 SBE 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. If San Francisco Labor and Employment Code Article 111 (formerly Administrative Code Chapter 12P) applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Chapter Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

10.8 Health Care Accountability Ordinance. If San Francisco Labor and Employment Code Article 121 (formerly Administrative Code Chapter 12Q) applies to this contract, Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121 as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) or California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq., if state funds involved.

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 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Article 142 (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Labor and Employment Code (Article 142), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

10.14.2 The requirements of Article 142 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. Article 142 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: Wade Wietgreffe
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue
San Francisco, CA 94103
wade.wietgreffe@sfmta.com

To Contractor: Eryn Brennan
Environmental Science Associates (ESA)
575 Market Street, Suite 3700
San Francisco, CA 94105
ebrennan@esassoc.com

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by email, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least 10 Days Prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Laws Requiring Access for People with Disabilities

11.2.1 Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.2.2 Reserved. (Information and Communication Technology Accessibility)

11.3 Incorporation of Recitals. The matters recited above are hereby 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 §7920 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 must submit the Contract Modification Form (CMD Form 10) along with the required supporting documentation to the CCO and obtain prior CCO approval for 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%, and then for any subsequent amendment, modification, supplement, or change order that would result in a cumulative increase of the last CCO approved value by more than 20%.

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. Disputes will not be subject to binding arbitration. 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 including the appendices sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

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

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

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

11.13 Order of Precedence. The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. 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 in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor's proposal, and

Contractor's printed terms, respectively. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

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 any City Data under this Agreement, and in no event later than 24 hours after Contractor 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. 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 City Data; Confidential Information . In the performance of Services, Contractor may have access to, or collect on City’s behalf, City Data, which may include proprietary or Confidential Information, that if disclosed 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 . Contractor agrees to hold City Data received from, or created 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 by Contractor or its authorized Subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent 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. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. 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, 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 and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

13.5.3 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than 30 Days, return all Data given to or collected or created 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.

13.6 Loss or Unauthorized Access to City’s Data; Security Breach Notification
Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any “Leak”) within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. Contractor shall pay for the provision to the affected individuals of twenty-four (24) months of free credit monitoring services, if the Leak involved information of a nature reasonably necessitating such credit monitoring. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 14 MacBride and Signature

14.1 MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code Chapter 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.

CITY	CONTRACTOR
San Francisco Municipal Transportation Agency	Environmental Science Associates (ESA)
_____ Jeffrey P. Tumlin Director of Transportation	_____ Dan Dameron Vice President
Authorized By: Municipal Transportation Agency Board of Directors	<u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u>
Resolution No: _____	By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.
Adopted: _____	
Attest: _____ Secretary, to the Board	City Supplier Number: 0000020593
Approved as to Form: David Chiu City Attorney	
By: _____ David F. Innis Deputy City Attorney	

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Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form
- D: FTA Requirements
- E: SBE Requirements

Appendix A Scope of Services

1. Description of Services

The SFMTA is soliciting the services of a firm(s) to perform environmental analysis services in accordance with CEQA), NEPA, as-needed, and public outreach and engagement. The services will primarily involve the SFMTA Building Progress Program, including individual projects from the Building Progress Program, which has the goal of rebuilding and modernizing SFMTA's oldest and largest bus, rail, and other facilities. Such services must satisfy the requirements of CEQA, San Francisco Administrative Code Chapter 31, and any NEPA requirements. Other services to be performed may include public outreach and engagement as required by laws or as sought by the SFMTA for the projects.

The SFMTA's **Building Progress Program** is a \$2+ billion multi-year effort to repair, renovate, and modernize the SFMTA's aging facilities to keep the City moving and transition to a battery-electric bus fleet. A detailed description of the program can be found at Building Progress Program | SFMTA. Major individual projects that may need environmental and outreach work may include (draft list – individual Purchase Orders and/or Task Orders will define scope, schedule, budget):

- Presidio Yard Modernization Project at 949 Presidio Avenue: demolition of existing facility and replacement with a new transit facility, along with joint development uses. Scope may include CEQA review and NEPA review and public outreach and engagement, starting in 2024.
- Kirkland Yard Electrification Project at 2301 Stockton Street: renovation of an existing transit facility to add charging infrastructure and parking. Scope may include NEPA review and public outreach and engagement, starting in 2024.
- Islais Creek Motor Coach Facility at 1301 Cesar Chavez Boulevard: renovation of an existing transit facility to add charging infrastructure. Scope may include NEPA review and public outreach and engagement, starting in 2024.
- Cable Car Barn Master Plan and System Improvements: cable car guideway improvements at the barn (1201 Mason Street) and in the public right-of-way.
- Other joint development opportunities such as the SFMTA 4th-5th/Mission Garage, the SFMTA Moscone Garage, SFMTA 4th/Folsom street site, and other SFMTA properties.
- Other projects that may be identified by the SFMTA.

The following describes the types of work tasks included in individual Purchase Orders and/or Task Orders.

A. Environmental Analysis Services

The San Francisco Administrative Code Chapter 31 (“Chapter 31”) designates the Planning Department’s Office of Environmental Review (aka Environmental Planning division) as the lead agency for public and private projects within San Francisco and/or under the jurisdiction of San Francisco departments, for purposes of CEQA. Chapter 31 does not designate specific responsibilities for purposes of NEPA.

The consultant and/or subcontractors shall perform professional and technical services in accordance with Chapter 31 requirements and other local (e.g., (e.g., Historic Preservation Commission duties under NEPA), state (e.g., CEQA) and federal laws and regulations (e.g., NEPA) for environmental analysis, as needed. This may include preparing a variety of CEQA and NEPA documents.

Consultants prepare Environmental Impact Reports (EIRs) and many complex Mitigated Negative Declarations for CEQA in San Francisco. Applicable CEQA documents must address all topics contained in San Francisco’s Initial Study/environmental evaluation checklist. The checklist generally mirrors Appendix G of the CEQA Guidelines but contains topics specific to San Francisco. Applicable CEQA documents are prepared in accordance with the Department’s *Consultant Guidelines for the Preparation of Environmental Review Documents* (available at Planning Department’s Environmental Review Resources).

Consultants prepare Environmental Impact Statements (EISs) and complex Environmental Assessments for NEPA in San Francisco. Applicable NEPA documents must address all NEPA requirements, including any guidance documents by the applicable Federal or State agency (e.g., Federal Transit Administration).

Consultants will generally be expected to: complete document production; conduct appropriate notification according to City, State, and Federal requirements; attend hearings; track and record oral and written comments; respond to comments submitted on environmental review documents and appeals; and prepare the administrative record for the projects. Consultants will generally be expected to ensure all subconsultant-prepared materials are reviewed prior to submittal to Environmental Planning (e.g., technical studies). Consultant resources must reflect a proven ability to conduct environmental review in an accurate, adequate, objective, and legally defensible manner (e.g., see Planning’s objective protocols available at Planning Department’s Environmental Review Resources).

Consultants may also support City staff in document production that the supports the approval of the projects such as city agency and decision-making staff reports, environmental findings under CEQA and NEPA, or other related tasks, assuming it does not create conflicts of interest on the projects.

Please Note: The SFMTA or Planning may utilize professional contract peer review of the documents at key points during the EIRs preparation process.

B. Public Outreach and Engagement

The consultant and/or subcontractors may provide public outreach and engagement services through the term of the Contract, to support the CEQA review, and NEPA review as

needed, as well as the larger outreach and engagement needs of the SFMTA. Contractor shall generally support the SFMTA project team with planning, crafting, and delivering best practices, and culturally competent outreach and engagement with stakeholder communities and the public at-large. Public outreach and engagement may progress continuously with, but mostly parallel to, the environmental review scope.

Contractor shall use the SFMTA's Public Outreach and Engagement Team Strategy (POETS) for guidance in preparing strategies, engagements, and deliverables. All Contractor work and deliverables shall be designed to meet the needs of community stakeholders while supporting the SFMTA's key policies and standards, including but not limited to SFMTA's Strategic Plan (and subsequent updates), SFMTA's Racial Equity Action Plan (and subsequent updates), and SFMTA's Brand Standards (to be provided to firm(s)).

Consultants will be expected to follow POETS and industry best practices for public outreach and engagement when completing task orders. Tasks could include but will not be limited to: preparing public engagement, outreach, and communication plans, including objectives of the plans; customizing culturally-relevant and specific materials for different audiences for outreach and engagement activities or notifications (including using different mediums and channels), including project messaging; coaching and training City staff in preparing for activities; advertising activities; identifying and recruiting people to participate in activities; leading activities; reporting on activities and projects; evaluating effectiveness of activities in relation to objectives of the plans; and maintaining and following up with stakeholders and participants.

C. Administration

During the life of the contract, the Consultant should expect to:

- Administer appropriate meetings by, among other things, identifying attendees, preparing agendas of purpose and key outcomes sought, and preparing meeting minutes (e.g., summary of major items, action items, etc.), including but not limited to kick-off meetings; check-in meetings to discuss progress, preview administrative documents, and discuss city comments on administrative documents; and public scoping meetings and public hearings.
- Provide status reports describing work completed by Task.
- Determine appropriate format of deliverables with SFMTA or Planning (e.g., geodatabase, pdf, word, track changes, etc.) and if electronic and physical, if necessary, of all draft and final deliverables, including but not limited to work plans, meeting minutes, technical studies, and publicly distributed documents.

For all tasks under the contract, all materials intended to be posted on the SFMTA website or provided to the SFMTA Board must also be Federal Section 508 compliant (accessible for all users), including, but not limited to, descriptions of all graphics in text format and all information usable with common screen reading software. The City and County of San Francisco recognizes its obligation under the Americans with Disabilities Act (ADA) and other disability civil rights laws to provide equal access to all City and County programs and activities.

Environmental documents and notices published for public use for this project shall follow the enhanced Web Accessibility Standards & Guidelines.

D. Reserved. (Sections Applicable to Goods)

2. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

3. Reports

Contractor shall submit written reports as requested by the SFMTA. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

4. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be Wade Wietgreffe at wade.wietgreffe@sfmta.com.

**Appendix B
Calculation of Charges**

Fully burdened rates should be used. The Federal Transit Administration (FTA) will require all information as to how the fully burdened rates are derived, and the contractor team should be ready to provide that information upon request.

Cost must comply with the Federal Acquisition Regulation (FAR), 48 CFR Part 31 (Federal cost principles for for-profit entities)

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

Firm	Name	Position/Classification (Work to be performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
ESA	Terri Avila	CEQA Project Manager Lead/ Senior Principal Consultant 4	PhD., Master of Science or Arts 20-30+ years	\$102.57	\$301.59
ESA	N/A	Senior Principal Consultant 3	PhD., Master of Science or Arts 20-30+ years	\$104.06	\$305.97
ESA	N/A	Senior Principal Consultant 2	PhD., Master of Science or Arts 20-30+ years	\$95.52	\$280.86
ESA	N/A	Senior Principal Consultant 1	PhD., Master of Science or Arts 20-30+ years	\$87.29	\$256.66
ESA	N/A	Principal Consultant 6	PhD., Master of Science or Arts 20-30+ years	\$96.93	\$285.00
ESA	Christine Fukasawa	Senior QA/QC Reviewer/ Principal Consultant 5	Bachelor or Master of Science or Arts 15-20+ years	\$91.35	\$268.60
ESA	Eryn Brennan	Environmental Review Project Manager/ Contract Manager/ Principal Consultant 5	Master of Arts and Master of Architectural History and Certificate in Historic Preservation 15 years	\$90.11	\$264.95
ESA	Melissa Logue	Transportation, FTA Strategy Support/Principal Consultant 4	Bachelor of Arts 21 years	\$89.72	\$263.80
ESA	Brian Schuster	Air Quality, Energy, GHG/Principal Consultant 4	Bachelor of Science 15 years	\$86.66	\$254.81
ESA	Brian Pittman	Biological Resources/Principal Consultant 4	Master of Science 26 years	\$85.35	\$250.95
ESA	Karl Heisler	Wind, Shadow/Principal Consultant 3	Bachelor of Arts 31 years	\$80.69	\$237.25

Firm	Name	Position/Classification (Work to be performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
ESA	Becky Urbano	Historic Architectural Resources/Principal Consultant 3	Master of Science / 20 years	\$77.07	\$226.61
ESA	Michael Burns	Hazards & Hazardous Materials, Hydrology/Water Quality, Geology & Soils/Principal Consultant 3	Bachelor of Science / 30+ years	\$76.93	\$226.20
ESA	Matthew Russell	Archaeological Resources/Principal Consultant 2	Ph.D. / 30 years	\$85.58	\$251.63
ESA	N/A	Principal Consultant 1	Bachelor or Master of Science or Arts / 15-20+ years	\$63.60	\$187.00
ESA	Paul Mitchell	CEQA Project Manager/Managing Consultant 6	Bachelor of Science / 25+ years	\$80.17	\$235.72
ESA	N/A	Managing Consultant 5	Bachelor or Master of Science or Arts / 10-20+ years	\$76.96	\$226.29
ESA	Karen Lancelle	Hazards & Hazardous Materials, Hydrology/Water Quality, Geology & Soils/Managing Consultant 4	Master of Library and Information Science / 10 years	\$69.36	\$203.94
ESA	Chris Sanchez	Noise and Vibration/Managing Consultant 4	Bachelor of Science / 30 years	\$68.23	\$200.62
ESA	Cheri Velzy	Air Quality/Managing Consultant 4	Bachelor of Science / 32 years	\$60.04	\$176.54
ESA	Jyothi Iyer	Noise and Vibration/Managing Consultant 3	Master of Science / 16 years	\$61.65	\$181.27
ESA	N/A	Managing Consultant 2	Bachelor or Master of Science or Arts / 10-20+ years	\$60.27	\$177.21
ESA	N/A	Managing Consultant 1	Bachelor or Master of Science or Arts / 10-20+ years	\$56.09	\$164.92
ESA	N/A	Senior Consultant 6	Bachelor or Master of Science or Arts / 10-20+ years	\$66.32	\$195.00
ESA	Steve Smith	Land Use & Planning, Aesthetics, Population & Housing/Senior Consultant 5	Master of Arts / 25 years	\$57.10	\$167.89

Firm	Name	Position/Classification (Work to be performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
ESA	N/A	Senior Consultant 4	Bachelor or Master of Science or Arts / 5-10 years	\$56.33	\$165.63
ESA	Rachel Haines	Biological Resources / Senior Consultant 3	Bachelor of Science / 16 years	\$51.92	\$152.66
ESA	Eryn Pimentel	Geographic Information Systems/Senior Consultant 3	Bachelor of Arts / 16 years	\$49.48	\$145.49
ESA	Johanna Kahn	Historic Architectural Resources / Senior Consultant 2	Master of Architectural History and Certificate in Historic Preservation / 14 years	\$43.95	\$129.23
ESA	N/A	Senior Consultant 1	Bachelor or Master of Science or Arts / 5-10 years	\$43.39	\$127.58
ESA	N/A	Associate Consultant 6	Bachelor or Master of Science or Arts / 5-10 years	\$53.52	\$157.36
ESA	N/A	Associate Consultant 5	Bachelor / 3-10 years	\$50.48	\$148.43
ESA	N/A	Associate Consultant 4	Bachelor / 3-10 years	\$46.52	\$136.78
ESA	N/A	Associate Consultant 3	Bachelor / 3-10 years	\$42.76	\$125.73
ESA	N/A	Associate Consultant 2	Bachelor / 3-10 years	\$39.71	\$116.76
ESA	N/A	Associate Consultant 1	Bachelor / 3-5 years	\$35.33	\$103.88
ESA	N/A	Consultant 6	Bachelor / 3-5 years	\$40.12	\$117.96
ESA	N/A	Consultant 5	Bachelor / 3-5 years	\$36.24	\$106.56
ESA	N/A	Consultant 4	Bachelor / 3-5 years	\$34.65	\$101.88
ESA	N/A	Consultant 3	Bachelor / 0-5 years	\$31.40	\$92.33
ESA	N/A	Consultant 2	Bachelor / 0-5 years	\$28.88	\$84.92
ESA	N/A	Consultant 1	Bachelor / 0-5 years	\$25.80	\$75.86
ESA	N/A	Project Technician 6	Bachelor / 0-5 years	\$62.82	\$184.71
ESA	N/A	Project Technician 5	Bachelor or equivalent technical training / 0-5 years	\$52.98	\$155.78
ESA	N/A	Project Technician 4	Bachelor or equivalent technical training / 0-5 years	\$44.85	\$131.87
ESA	N/A	Project Technician 3	Bachelor or equivalent technical training / 0-5 years	\$37.04	\$108.91

Firm	Name	Position/Classification (Work to be performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
ESA	N/A	Project Technician 2	Bachelor or equivalent technical training / 0-5 years	\$26.85	\$78.95
ESA	N/A	Project Technician 1	Bachelor or equivalent technical training / 0-5 years	\$23.36	\$68.69
Advant Consulting AEW Engineering, Inc.	José I. Farrán, P.E.	Sr. Transportation Planner and Sr. Traffic Engineer	Master of Engineering/ 38 years	\$240.00	\$240.00
AEW Engineering, Inc.	Kenneth Leung	Principal/Owner	Ph.D. / 35+ years	\$120.00	\$330.00
AEW Engineering, Inc.	Randall Young	Senior Geologist	Bachelor of Science / 30+ years	\$62.50	\$171.88
AEW Engineering, Inc.	James Medley	Senior Scientist	Bachelor of Science / 20+ years	\$62.50	\$171.88
AEW Engineering, Inc.	Steven Aiosa	Environmental Scientist/Inspector	Bachelor of Science / 18 years	\$55.00	\$151.25
AEW Engineering, Inc.	Ryder Musselman	Professional Geologist (PG)	Bachelor of Science / 4 years	\$62.50	\$171.88
AEW Engineering, Inc.	Natalie Balgie	Environmental Scientist	Bachelor of Science / 2 years	\$38.00	\$104.50
AEW Engineering, Inc.	Alexis Iwan	Project Assistant	Bachelor of Arts / 10 years	\$45.00	\$123.75
Forget Me Not History LLC	Erica Schultz	Principal, Architectural Historian	Master of Historic Preservation / 19 years	\$165.00	\$165.00
Fehr & Peers	N/A	Principal - Category D	Bachelor's or more advanced degree / 20+ years PE or AICP (typ.), Firm Technical or Operational Leader	\$137.98	\$388.26
Fehr & Peers	N/A	Principal - Category C	Bachelor's or more advanced degree / 15+ years PE or AICP (typ.), Firm Technical or Operational Leader	\$118.03	\$332.12

Firm	Name	Position/Classification (Work to be performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
Fehr & Peers	N/A	Principal - Category B	Bachelor's or more advanced degree / 15+ years PE or AICP (typ.) or extensive training in technical topic(s)	\$96.63	\$271.91
Fehr & Peers	N/A	Associate - Category E	Bachelor's or more advanced degree / 15+ years	\$96.15	\$270.56
Fehr & Peers	Matt Goynes, PE	Principal-in-Charge	Bachelor of Science / 15+ years	\$94.09	\$264.76
Fehr & Peers	Neil Smolen	Project Manager	Master of Science / 10+ years	\$87.16	\$245.26
Fehr & Peers	N/A	Principal - Category A	Bachelor's or more advanced degree / 15+ years technical subject matter expert	\$88.46	\$248.92
Fehr & Peers	N/A	Associate - Category D	Bachelor's or more advanced degree / 12+ years	\$86.54	\$243.51
Fehr & Peers	N/A	Associate - Category C	Bachelor's or more advanced degree / 10+ years technical expert	\$80.29	\$225.93
Fehr & Peers	N/A	Associate - Category B	Bachelor's or more advanced degree / 10+ years	\$73.56	\$206.99
Fehr & Peers	N/A	Associate - Category A	Bachelor's or more advanced degree / 8+ years	\$69.23	\$194.81
Fehr & Peers	N/A	Engineer/Planner - Category F	Bachelor's or more advanced degree 6+ years /	\$63.22	\$177.89
Fehr & Peers	N/A	Engineer/Planner - Category E	Bachelor's or more advanced degree / 5+ years	\$60.58	\$170.47
Fehr & Peers	N/A	Engineer/Planner - Category D	Bachelor's or more advanced degree / 5+ years	\$58.65	\$165.04
Fehr & Peers	N/A	Engineer/Planner - Category C	Bachelor's or more advanced degree / 3+ years	\$53.85	\$151.53
Fehr & Peers	N/A	Technician - Category D	4-year degree or equivalent technical training / 4+ years certification (typ.)	\$53.37	\$150.18
Fehr & Peers	N/A	Administrative Assistant - Category F	4-year degree / 6+ years	\$52.40	\$147.45
Fehr & Peers	N/A	Engineer/Planner - Category B	Bachelor's or more advanced degree / 1+ years	\$49.04	\$137.99
Fehr & Peers	N/A	Technician - Category C	4-year degree or equivalent technical training / 4+ years	\$48.80	\$137.32
Fehr & Peers	N/A	Technician - Category B	4-year degree or equivalent technical training / 2+ years	\$48.32	\$135.97

Firm	Name	Position/Classification (Work to be performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
Fehr & Peers	N/A	Engineer/Planner - Category A	Bachelor's or more advanced degree in transportation planning, engineering or related field	\$45.67	\$128.51
Fehr & Peers	N/A	Administrative Assistant - Category E	4-year degree / 4+ years	\$42.55	\$119.73
Fehr & Peers	N/A	Administrative Assistant - Category D	4-year degree / 2+ years	\$40.87	\$115.00
Fehr & Peers	N/A	Technician - Category A	Associate's degree or equivalent certificate / 2-4 years	\$39.66	\$111.60
Fehr & Peers	N/A	Administrative Assistant - Category C	Associate's degree or equivalent certificate / 0-2 years	\$35.00	\$98.49
Fehr & Peers	N/A	Intern - Category B	2+ years of college experience in field of planning & engineering or other related field	\$35.00	\$98.49
Fehr & Peers	N/A	Intern - Category A	Some college experience in field of planning & engineering or other related field	\$33.00	\$92.86
Fehr & Peers	N/A	Administrative Assistant - Category B	Associate's degree or equivalent certificate / 0-2 years	\$32.21	\$90.64
Fehr & Peers	N/A	Administrative Assistant - Category A	Associate's degree or equivalent certificate / 0-2 years	\$30.29	\$85.23
HNTB		Environmental Review- Project Manager/Project Director	Bachelor's Degree / 16+ years	\$172.87	\$404.81
HNTB		NEPA Subject matter Expert/ FTA Strategic Advisor/Sr Project Manager Planning	Bachelor's Degree / 16+ years	\$127.68	\$298.99
HNTB	Carie Montero	HNTB NEPA Lead/Group Director - Planning	Master of Arts / 29 years	\$126.17	\$295.45
HNTB	Helen Kornblatt	Senior FTA Advisor/Principal Planner	Master of Arts / 35 years	\$120.96	\$283.25
HNTB		Project Manager II - Engineering	Bachelor's Degree / 10+ years	\$119.53	\$279.90
HNTB	Brian Elrod	Department Manager - Planning NEPA Project	Bachelor of Landscape Architecture / 38 years	\$107.60	\$251.97
HNTB	James Santos	Manager/Section4(f)/Project Manager II - Planning	Bachelor's Degree / 18 years	\$102.56	\$240.16
HNTB	Tami Podesta	Section 4(f)	Bachelor of Arts / 21 years	\$98.62	\$230.94
HNTB		Principal Landscape/Urban Designer	Bachelor's Degree / 12+ years	\$98.20	\$229.95

Firm	Name	Position/Classification (Work to be performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
HNTB		Climate Resilience-Adaptation/Section Manager - Planning	Bachelor's Degree / 10+ years	\$97.61	\$228.57
HNTB		Sr Project Engineer	Bachelor's Degree / 8+ years	\$88.24	\$206.63
HNTB	Thomas Warner	NEPA Community Impacts/Energy/Sr Planner	Master of Science / 16 years	\$84.59	\$198.08
HNTB		Planner V	Bachelor's Degree / 8+ years	\$77.53	\$181.55
HNTB		Senior Archaeologist/Project Manager I - Planning	Bachelor's Degree / 8+ years	\$76.78	\$179.80
HNTB		Sr Landscape/Urban Designer	Bachelor's Degree / 10+ years	\$76.10	\$178.20
HNTB	Rosanna McGuire	Biology / Sea Level Rise-Wildfire /Planner IV	Bachelor's Degree / 6+ years	\$68.04	\$159.33
HNTB		Planner III	Bachelor's Degree / 4+ years	\$66.28	\$155.21
HNTB		GIS/NEPA Planner/Coordinator / Environmental Planner IV	Bachelor's Degree / 6+ years	\$63.67	\$149.10
HNTB	Michael Babin	ADA 508 Compliance/Sr Technical Writer/Editor	Bachelor's Degree / 33 years	\$63.42	\$148.51
HNTB	Leslie Schwab	Architectural Historian	Master of Science / 25 years	\$61.32	\$143.59
HNTB	N/A	QA/Document Controls Specialist III	Bachelor's Degree / 8-14 years	\$60.40	\$141.44
HNTB	N/A	Project Analyst I	Bachelor's Degree / 2-4 years	\$50.74	\$118.82
HNTB	N/A	GIS/Graphics/Planner II	Bachelor's Degree / 2+ years	\$50.48	\$118.21
HNTB	N/A	Planner I	Bachelor's Degree / 0-2 years	\$46.87	\$109.76
HNTB	N/A	Visual Analysis/Landscape/Urban Designer III	Master of Landscape Architecture 3+ years	\$45.78	\$107.20
HNTB	N/A	Project Finance Associate II	Bachelor's Degree / 0-2 years	\$35.95	\$84.18
InkeDesign Consulting LLC	Inke Noël	Lead Designer	Bachelor of Arts / 18+ years	\$90.00	\$198.00
InkeDesign Consulting LLC	Jens-Peter Jungclauss	UX Designer, Design Strategy	Master of Arts / 14 years	\$90.00	\$198.00
InterEthnica	Lisa Abboud	Principal / Lead Strategist	BA /25+ years	\$88.05	\$250.94
InterEthnica	Deborah Oh	Associate Principal	BA / 15+ years	\$67.77	\$193.14
InterEthnica	Deborah Oh	Cultural Consultant	BA / 15+ years	\$67.77	\$193.14

Firm	Name	Position/Classification (Work to be performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
InterEthnica	Mona Abboud	Vice President	BA / 15+ years	\$67.77	\$193.14
InterEthnica	Monica Wong	Sr. Linguist (Chinese)	Bachelor of Arts / 12 years	\$67.02	\$191.01
InterEthnica	Ayali Puerta	Sr. Linguist (Spanish)	Master of Arts / 19 years	\$67.02	\$191.01
InterEthnica	Joi Barrio	Sr. Linguist (Tagalog/Filipino)	Master of Arts / 27 years	\$67.02	\$191.01
InterEthnica	Ngoc Son	Sr. Linguist (Vietnamese)	Bachelor of Arts / 20 years	\$67.02	\$191.01
InterEthnica		Sr. Project Manager	BA / 2-4 years	\$67.02	\$191.01
InterEthnica		Statistician	BA / 10+ years	\$67.02	\$191.01
InterEthnica	Dennis Castro	Linguist (Tagalog/Filipino)	Ph.D. / 15 years	\$58.01	\$165.33
InterEthnica	Marci Valvi	Linguist (Spanish)	Bachelor of Arts / 15 years	\$58.01	\$165.33
InterEthnica	Harvey Chin	Linguist (Chinese)	Bachelor of Arts / 12 years	\$58.01	\$165.33
InterEthnica		Research Analyst	BA / 5+ years	\$52.78	\$150.42
InterEthnica	Vanessa Zamora	Project Manager	BA / 2-4 years	\$52.78	\$150.42
InterEthnica	Elena Castañon	Engagement Lead	BA / 5+ years	\$52.78	\$150.42
InterEthnica		Sound Tech/Engineer	BA / 2-4 years	\$52.78	\$150.42
InterEthnica		Jr. Project Manager	BA / 2-4 years	\$46.92	\$133.72
InterEthnica	Ziad Chouman	Graphic Design	MA / 5+ years	\$46.92	\$133.72
InterEthnica	Mandy Yu	Community Engagement Specialist	MA / 5+ years	\$46.92	\$133.72
InterEthnica	Anna Wood	Sr. Project Associate	BA / 2-4 years	\$43.87	\$125.03
InterEthnica		Research Assistant	BA / 2-4 years	\$43.87	\$125.03
InterEthnica	Ka Ki (Kaki) Yan	Project Associate Engagement	BA / 1-3 years	\$35.00	\$99.75
InterEthnica	Michael Abboud	Jr. Project Associate	BA / 0-2 years	\$30.00	\$85.50
LCW Consulting	Luva Wyznyckyj	Principal	Master of Urban Planning / 39 years	\$240.00	\$240.00
Natalie Macris	Natalie Macris	Technical Editing	Master of City Planning / 32 years	\$160.00	\$160.00
Prevision Design	N/A	Project Lead	20+ years	\$290.00	\$290.00
Prevision Design	N/A	Project Admin	5+ years	\$85.00	\$85.00
RWDI	Hanjing Wu	Technical Director	Ph.D. / 40 years	\$72.40	\$261.44
RWDI	Dan Bacon	Senior Project Manager	Technical Illustration / 30 years	\$78.80	\$284.55

Firm	Name	Position/Classification (Work to be performed)	Education/ Experience	Direct Hourly Labor Rate	Fully Burdened Hourly Labor Rate
RWDI	Natalie Firth	Project Administrator	Bachelor of Arts / 5 years	\$29.50	\$106.52
RWDI	N/A	Specialist Engineer/Scientist	Varies	\$56.60	\$204.38
RWDI	N/A	Senior Engineer/Scientist	Varies	\$46.30	\$167.19
RWDI	N/A	Engineer/Scientist II	Varies	\$37.60	\$135.77
RWDI	N/A	Engineer/Scientist I	Varies	\$30.80	\$111.22
RWDI	N/A	Computer Modeler	Varies	\$30.00	\$108.33
RWDI	N/A	Physical Modeler	Varies	\$28.40	\$102.55
RWDI	N/A	Wind Tunnel Technologist	Varies	\$35.90	\$129.63
Wilson Ihrig	Deborah Jue	Principal / Noise and Vibration	Master of Science / 33 years	\$85.80	\$244.56
Wilson Ihrig	N/A	Associate Principal / Noise and Vibration	Bachelor or Master of Science / 14-20 years	\$68.65	\$195.68
Wilson Ihrig	N/A	Project Controls / Noise and Vibration	Bachelor of Science / 5-25 years	\$63.60	\$181.29
Wilson Ihrig	Sarah Kaddatz	Senior Consultant / Noise and Vibration	Bachelor of Science	\$59.30	\$169.03
Wilson Ihrig	N/A	Project Assistant / Noise and Vibration	Bachelor of Science / 5-25 years	\$56.40	\$160.76
Wilson Ihrig	Patrick Faner	Associate I, II, III / Noise and Vibration	Bachelor of Science / 3-12 years	\$51.95	\$148.08
Wilson Ihrig	N/A	Assistant / Noise and Vibration	Bachelor of Science / 0-3 years	\$44.00	\$125.42
Wilson Ihrig	Fletcher Pratt	Technician / Noise and Vibration	Bachelor of Science / 0-10 years	\$37.00	\$105.46

****Fully Burdened Hourly Labor Billing Rate; given that the firm is a sole proprietorship and the typical size of contracts, there is no salary rate available.
Fully Burdened Hourly Labor Billing Rate = Direct Hourly Rate x Multiplier listed in Table 2**

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

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

Firm	Overhead (%)	Multiplier
ESA – Prime Contractor	194.03%	2.94
HNTB - Subconsultant	134.17%	2.34
InterEthnica – Subconsultant (SBE)	185%	2.85
AEW Engineering Inc – Subconsultant (SBE)	175%	2.75
Fehr & Peers	181.39%	2.81
InkeDesign Consulting LLC (DBE/SBE)	120%	2.20
RWDI	261.10%	3.61
Wilson Ihrig – Subconsultant	184.04	2.8
Adavant Consulting – Subconsultant (SBE)	N/A	N/A
Forget Me Not History – Subconsultant (SBE)	N/A	N/A
LCW Consulting – Subconsultant	N/A	N/A
Natalie Macris – Subconsultant (SBE)	N/A	N/A
PreVision – Subconsultant (SBE)	N/A	N/A

Table 2b. Profit and Markup for Contractor and Subcontractor

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

Table 3: Other direct cost (ODC) items required to complete the work described in this Agreement.

Company	Other Costs	
	Item	Cost
ESA	Printing: Black & White – 8.5 x 11	At cost
ESA	Printing: Black & White – 11 x 17	At cost
ESA	Printing: Color – 8.5 x 11	At cost
ESA	Printing: Color – 11 x 17	At cost
ESA	B&W – Plotter (Toner – ECO Quality)	At cost
ESA	B&W – Plotter (Toner – Presentation Quality)	At cost
ESA	Color – Plotter (Inkjet – ECO Quality)	At cost
ESA	Color – Plotter (Inkjet – Presentation Quality)	At cost
ESA	USB	At cost
ESA	Digital Photography	At cost
ESA	All Other Items (including bindings and covers)	At cost

Appendix C

TASK ORDER REQUEST FORM

Task Title: <u>Enter Task Title</u> Date Initiated: <u>xx/xx/xx</u>	
Type of Request:	
<input type="checkbox"/> New Task Order- No. <u>XX</u>	
<input type="checkbox"/> Modification No. _____ (attach approved original and all modifications to date)	
Total Amount Being Requested:	<u>\$ x,xxx.xx</u>
Total approved task to date (including all mods.):	<u>\$ _____</u>
Total task amount including this request:	<u>\$ x,xxx.xx</u>
Task Start Date: <u>xx/xx/xx</u> Modification Start Date: _____	
Estimated Completion Date: <u>xx/xx/xx</u>	
Funding Source:	Proposed Task SBE Goal: <u>xxx.xx %</u>
Account: _____ Fund: _____ Dept: _____ Authority: _____	
Project: _____ Activity: _____	
Project Title: _____	
Work to be Performed:	

APPROVALS

Requested by: _____ **Date** _____
Name, Title

Approved by: _____ **Date** _____
Name, Contract Manager

Reviewed by: _____ **Date** _____
Trinh Nguyen, Manager Contracts & Procurement, Federal

Reviewed by: _____ **Date** _____
Virginia Harmon, Contract Compliance Office

Approved by: _____ **Date** _____
Division Director, Title

Proposed Staff and Budget:

NAME	HOURS	LOADED RATE	LABOR COST	ODCS	TOTALS
Total Services					
Profit					
Other Direct Costs (ODCs)					

Grand Total This Task: \$000,000

Notes:

Approved by Requestor:

Signature :

Date:

Appendix D

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

I. DEFINITIONS

- A. **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. **Contractor** means the individual or entity awarded a third-party contract financed in whole or in part with Federal assistance originally derived from FTA.
- C. **Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.
- D. **Federal Transit Administration (FTA)** is an operating administration of the U.S. DOT.
- E. **FTA Directive** includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.
- F. **Grant Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- G. **Government** means the United States of America and any executive department or agency thereof.
- H. **Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.
- I. **Recipient** means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.
- J. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- K. **Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

- L. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.
- M. **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

- A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

IV. DEBARMENT AND SUSPENSION

- A. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:
 - a) Debarred from participation in any federally assisted Award;
 - b) Suspended from participation in any federally assisted Award;
 - c) Proposed for debarment from participation in any federally assisted Award;

- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

See Appendix D of Request for Proposal, Certification Regarding Debarment, Suspension, and Other Responsibility Matters

- B.** The Contractor agrees to include a provision in its lower-tier covered transactions requiring lower-tier participants to comply with the requirements of 2 CFR Part 180, Subpart C, and Part 1200, Subpart C.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- A.** The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. CIVIL RIGHTS

- A. Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the
- B.** Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- C. Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
 - 1. Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with

any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

VII. DBE/SBE ASSURANCES

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

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

VIII. PATENT RIGHTS *(applicable to contracts for experimental, research, or development projects financed by FTA)*

A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of

America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

- B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

IX. RIGHTS IN DATA AND COPYRIGHTS (*Applicable to contracts for planning, research, or development financed by FTA*)

- A. **Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
 - 1. **Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - 2. **Federal License.** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

- a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.
3. **FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.
4. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
5. **Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
6. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

- 7. Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- C. Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- D. Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- X. CONTRACT WORK HOURS AND SAFETY STANDARDS** (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)
- A. Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages** – The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may

be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

XI. ENERGY CONSERVATION REQUIREMENTS

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

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

- A.** The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.
- B.** The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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

- A.** Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B.** The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XIV. PRIVACY

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

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

XV. DRUG AND ALCOHOL TESTING

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XVIII. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials (*excluding* cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. “Construction materials” include an article, material, or supply that is or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall.

General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XIX. PROHIBITION AGAINST USE OF CONTRACT FUNDS FOR COVERED TELECOMMUNICATIONS EQUIPMENT

Under 2 CFR Section 216, Contractors and Subcontractors are prohibited from using Contract funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Section 889 of Public Law 115-232, covered telecommunications equipment is:
 - 1. telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - 2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - 3. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - 4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

XX. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

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

XXI. RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.
- C. Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXIII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

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

part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

XXIV. FLY AMERICA

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

XXV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

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

- A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - 1. **General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A

5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's Project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities

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

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas

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

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

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

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXVIII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

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

XXIX. SEAT BELT USE

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

XXX. LOBBYING *(To be submitted with each bid or offer exceeding \$100,000)*

Certification Regarding Lobbying required (See Appendix E of Request for Proposal).

XXXI. PROMPT PAYMENT

- A.** In accordance with SFMTA’s SBE/DBE Program, no later than three business days from the date of Contractor’s receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors unless the prime Contractor notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subcontractor. Within five working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractors.
- B.** Contractor may withhold retention from subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within 30 days of City’s payment of retention to Contractor for satisfactory completion of all work required of a subcontractor, Contractor shall release any retention withheld to the subcontractor. Satisfactory completion shall mean when all the tasks called for in the subcontract with subcontractor have been accomplished and documented as required by City. If the Contractor does not pay its subcontractor as required under the above paragraph, it shall pay interest to the subcontractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

XXXII. VETERANS EMPLOYMENT *(applicable to Capital Projects)*

As provided by 49 U.S.C. § 5325(k):

- A.** To the extent practicable, Contractor agrees that it:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital Project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and
- B. Contractor also assures that its subcontractor will:**
1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital Project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

APPENDIX E

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SBE/DBE REQUIREMENTS

Architects, Engineers, Planners, and Environmental Scientists and Other Professional Services

I. POLICY

The San Francisco Municipal Transportation Agency (SFMTA), recipient of federal financial assistance from the Federal Transit Administration (FTA), is committed to and has adopted, a Small Business Enterprise (SBE) and Disadvantaged Business Enterprise (DBE) Program to implement the Disadvantaged Business Enterprise regulations in 49 C.F.R. Part 26 (the "Regulations"), issued by the Department of Transportation (DOT).

It is the policy of the SFMTA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which SBEs and DBEs can compete fairly for contracts and subcontracts relating to SFMTA's construction, procurement and professional services activities. To this end, SFMTA has developed procedures to remove barriers to SBE and DBE participation in the bidding and award process and to assist SBEs and DBEs to develop and compete successfully outside of the SBE/DBE program. In connection with the performance of this contract, the Contractor will cooperate with SFMTA in meeting these commitments and objectives.

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

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

A. Applicability

Under 49 CFR Sections 26.3 and 26.51, and in response to the Federal Transit Administration's (FTA) March 23, 2006, publication of the Department of Transportation's (DOT) guidance concerning the federal DBE program that applies to grant recipients within the Ninth Circuit, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement race-neutral means of facilitating DBE participation in instances where the SFMTA lacks evidence of discrimination or its effects on DBEs. Per DOT requirements, the SFMTA

conducted a disparity study to determine if substantial disparities exist in the utilization of DBEs in the SFMTA's federally existed contracts. The results of the study concluded that for the SFMTA's professional services contracts, DBEs owned by women are underutilized, and DOT has authorized the SFMTA to establish contract goals for women-owned DBEs. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by DOT federal financial assistance.

B. Objectives

The objectives of this program are to:

1. Remove barriers to SBE and DBE participation in the bidding, award and administration of SFMTA contracts;
2. Assist SBEs and DBEs to develop and compete successfully outside of the Program;
3. Ensure that the Program is narrowly tailored in accordance with 49 C.F.R. Part 26;
4. Ensure that only SBEs and DBEs meeting the eligibility requirements are allowed to participate as SBEs and DBEs;
5. Identify business enterprises that are qualified as SBEs and DBEs and are qualified to provide SFMTA with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. Develop communications programs and procedures which will acquaint prospective SBEs and DBEs with SFMTA's contract procedures, activities and requirements and allow SBEs and DBEs to provide SFMTA with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
7. Administer the Program in close coordination with the various divisions within SFMTA so as to facilitate the successful implementation of this Program.

C. Administration of Program

The Director of Transportation is responsible for adherence to this policy. The DBE Liaison Officer (DBELO) shall be responsible for the development, implementation and monitoring of this program. It is the expectation of the Municipal Transportation Board of Directors and the Director of Transportation that all SFMTA personnel shall adhere to the provisions and the spirit of this program.

D. Prohibited Discrimination

The SFMTA shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the basis of (the fact or perception of a person's) race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation,

gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

E. The SFMTA shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals in the groups or categories or having the characteristics listed above.

F. The SFMTA has signed the federal assurances regarding nondiscrimination required under 49 C.F.R. Section 26.13. See III.D (Contract Assurances) for requirements of Contractor and Subconsultants.

II. DEFINITIONS

Any terms used in SFMTA's SBE/DBE Program that are defined in 49 C.F.R. Section 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations.

Disadvantaged Business Enterprise (DBE): A DBE is a for-profit, small business concern (1) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which 51% of the stock is owned by one or more socially and economically disadvantaged individuals; (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (3) that is certified under the California Unified Certification Program.

Small Business Enterprise (SBE): An SBE is a for-profit, small business concern with a three-year average gross revenue not exceeding current SBA size standards appropriate for its type of work and is either verified eligible by the SFMTA or the State of California's Small Business Program with the Department of General Services, the California Unified Certification Program with a U.S. Department of Transportation recipient, or the City and County of San Francisco's LBE program with the Contract Monitoring Division.

To be eligible to participate as a DBE or SBE on this contract, the total average gross revenue thresholds for the past five years must not exceed the current SBA business size standard appropriate to the type(s) of work the firm seeks to perform. Even if it meets the appropriate SBA size standard, a firm is not eligible if it (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years, in excess of \$30.40 million. These figures may be updated periodically by the DBE/SBE program.

III. SBE/DBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE and DBE Participation Goals

Contractor has committed to achieving 20% SBE and 5% Woman Owned DBE participation for this contract.

B. Determining the Amount of SBE and DBE Participation

The SFMTA strongly encourages the prime contractor to make every good faith effort to include SBEs and DBEs to perform meaningful work in all aspects of the projects. To accomplish this goal, the following guidance is provided:

1. SBE and DBE Participation

SBE and DBE participation includes contracts (other than employee contracts) with SBEs and DBEs for any goods or services specifically required for the completion of the work under the Agreement. An SBE or DBE may participate as a prime contractor/consultant, subcontractor/consultant, joint venture partner with a prime or consultant, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement.

2. Function

SBEs and DBEs must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work. However, an SBE or DBE may contract out a portion of the work if it is considered to be a normal industry practice. If an SBE or DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE or DBE shall be presumed not to be performing a commercially useful function.

3. Determining the amount of SBE and DBE Participation

SBE and DBE participation includes that portion of the contract work actually performed by a certified SBE or DBE with its own forces. An SBE or DBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by the contract.

An SBE's or DBE's participation can only be counted if it is performing a commercially useful function. An SBE or DBE is performing a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE or DBE is not responsible for at least 30 percent of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function.

The Contractor shall determine the amount of SBE and DBE participation for each SBE and DBE performing work on the contract in terms of both the total value of the work in dollars and the percentage of the total contract bid price. The Contractor shall also determine the total amount of SBE and DBE participation for the entire

contract. The Contractor shall count SBE and DBE participation according to the following guidelines:

SBE or DBE Prime Contractor

Count the entire dollar amount of the work performed or services provided by the SBE's or DBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE or DBE participation by the SBE or DBE Prime Contractor.

SBE or DBE Subcontractor

Count the entire amount of the work performed or services provided by the SBE's or DBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Contractor) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE or DBE subcontractor to another firm as SBE or DBE participation by said SBE or DBE subcontractor. If the work has been subcontracted to another SBE or DBE, it will be counted as SBE or DBE participation by that other SBE or DBE.

SBE or DBE Joint Venture Partner

Count the portion of the work that is performed solely by the SBE's or DBE's forces or if the work is not clearly delineated between the SBE or DBE and the joint venture partner, count the portion of the work equal to the SBE's or DBE's percentage of ownership interest in the joint venture.

SBE or DBE Regular Dealer

Count 60 percent of the costs of materials and supplies obtained from an SBE or DBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business (except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business). This applies whether an SBE or DBE is a prime contractor or subcontractor.

Other SBEs or DBEs

Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from an SBE or DBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

C. Submission of Certification for SBEs and DBEs

All firms wishing to receive credit for participation under the SFMTA's SBE/DBE Program must be certified as bona fide SBEs or DBEs with the SFMTA. This requires either

submission of: (1) the completed certification applications for either SBEs, DBEs, or LBEs, or (2) submission of the SFMTA's small business verification application. For information regarding where to obtain applications for these certifications, please contact the SFMTA Contract Compliance Office at:

San Francisco Municipal Transportation Agency
Contract Compliance Office
One South Van Ness Avenue, 6th floor
San Francisco, California 94103
todd.senigar@sfmta.com

D. Contract Assurances

The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. 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 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 the recipient deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

E. Use of SBE and DBE Firms

The Consultant shall use the specific SBEs and DBEs listed to perform the work and supply the materials for which each is listed unless the Consultant obtains CCO's prior written consent. Unless prior written consent by CCO is provided, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE or DBE.

F. Substitution of Subconsultants and Suppliers

The Consultant shall not terminate an SBE or DBE subconsultant or supplier for convenience and then perform the work with its own forces. Before requesting the termination and/or substitution of an SBE or DBE subconsultant, the Consultant must give notice in writing to the SBE or DBE subconsultant, with a copy to CCO, of its intent to request to terminate and/or substitute, and the reason for the request. The Consultant must give the SBE or DBE five days to respond to the notice and advise CCO and the Consultant of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Consultant's request should not be approved. CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the SFMTA Board of Directors.

When an SBE or DBE subconsultant is terminated as provided in this section, or fails to complete its work on the contract for any reason, the Consultant shall make good faith efforts to find another SBE or DBE subconsultant to substitute for the original SBE or DBE. These good faith efforts shall be directed at finding another SBE or DBE to perform at least the same amount

of work under the contract as the SBE or DBE that was terminated, to the extent needed to meet the established SBE or DBE contract goal.

G. Addition of Subconsultants and Suppliers

The Consultant shall notify CCO prior to any addition of an SBE/DBE or non-SBE/non-DBE subconsultant or supplier to the project. Submit SBE/DBE SFMTA Form No. 4 for each new SBE or DBE subconsultant or supplier. Any new SBE or DBE subconsultant or supplier approved by CCO also must submit SFMTA SBE/DBE Form No. 5.

H. Prompt Payment to Subcontractors

In accordance with SFMTA's SBE/DBE Program, no later than three business days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subconsultants unless the prime consultant notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant. Within five working days of such payment, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

The CO has implemented an online contract compliance monitoring system, B2GNow. If this contract is awarded after implementation of B2GNow, rather than completing and submitting SBE/DBE Form No. 7, the Consultant shall enter its subconsultant payment information into the B2GNow system. Subconsultants are then required to acknowledge payment from the Consultant online using the B2GNow system. B2GNow system training will be made available to the Consultant and its subconsultants.

Consultant may withhold retention from subconsultants if City withholds retention from Consultant. Should retention be withheld from Consultant, within 30 days of City's payment of retention to Consultant for satisfactory completion of all work required of a subconsultant, Contractor shall release any retention withheld to the subconsultant. Satisfactory completion shall mean when all the tasks called for in the subcontract with subconsultant have been accomplished and documented as required by City.

If the Consultant does not pay its subconsultant as required under the above paragraph, it shall pay interest to the subconsultant at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

IV. MONITORING AND COMPLIANCE

A. SBE and DBE Records; Reporting Requirements

The Contractor shall maintain records of all SBE and DBE participation in the performance of the contract including subcontracts entered into with certified SBEs and DBEs and all materials purchased from certified SBEs and DBEs.

The Contractor shall submit SBE and DBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE and DBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE and DBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Contractor shall submit a final summary SBE/DBE report to the CCO.

B. Noncompliance; Administrative Remedies

SFMTA will implement appropriate mechanisms to ensure that its prime contractors and subcontractors comply with SBE/DBE Program regulatory requirements. SFMTA will apply legal and contractual remedies available under federal, state and local law.

SFMTA will also include a monitoring and enforcement mechanism to verify that the work committed to SBEs and DBEs at contract award is actually performed by the SBEs and DBEs. This mechanism will provide for a running tally of actual SBE and DBE attainments and include a provision ensuring that SBE and DBE participation is credited toward overall or contract goals only when payments are actually made to SBE and DBE firms.