

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transit

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Contract No. 2020-48 with Jacobs Engineering Group Inc., Contract No. 2020-49 with STV Incorporated, and Contract No. 2020-50 with WSP USA Inc., to provide as-needed specialized consulting services to support the SFMTA’s Transit Division staff in the procurement, rehabilitation, and maintenance of its transit vehicle fleet and related systems and facilities, in an amount not to exceed \$5,000,000 for each contract, and for a term for each contract not to exceed five years, with four one-year options.

SUMMARY:



- On April 14, 2020, the SFMTA issued a Request for Proposals (RFP) to obtain qualified consultants to provide as-needed specialized consulting services to support its Transit Division staff in the procurement, rehabilitation, and maintenance of its transit vehicle fleet, transit-related equipment, Maintenance of Way, and various transit systems and facilities.
- A selection committee reviewed five proposals and ranked Jacobs Engineering Group Inc., WSP USA Inc., and STV Incorporated as the three highest-ranked proposers.
- The proposed Contracts will allow staff to obtain technical and professional services on short notice and on an as-needed basis.

ENCLOSURES:

1. SFMTA Board Resolution
2. Contract No. SFMTA-2020-48 with Jacobs Engineering Group Inc.
3. Contract No. SFMTA-2020-49 with STV Incorporated
4. Contract No. SFMTA-2020-50 with WSP USA Inc.

APPROVALS:

DATE

| | | |
|-----------|--|----------------------------|
| DIRECTOR |  _____ | November 10, 2020 _____ |
| SECRETARY |  _____ | November 10, 2020 _____ |

ASSIGNED SFMTAB CALENDAR DATE: November 17, 2020

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PURPOSE

The purpose of this calendar item is to authorize the Director of Transportation to execute Contract No. 2020-48 with Jacobs Engineering Group Inc., Contract No. 2020-49 with STV Incorporated, and Contract No. 2020-50 with WSP USA Inc., to provide as-needed specialized consulting services to support the SFMTA's Transit Division staff in the procurement, rehabilitation, and maintenance of its transit vehicle fleet and related systems and facilities, in an amount not to exceed \$5,000,000 for each contract, and for a term for each contract not to exceed five years, with four one-year options.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

Contract Nos. 2020-48, 2020-49 and 2020-50 would assist in the implementation of the following goals and objectives in the SFMTA Strategic Plan:

Strategic Plan Goal 2: Make transit and other sustainable modes of transportation the most attractive and preferred means of travel.

Objective 2.1: Improve transit service

Objective 2.2: Enhance and expand use of the city's sustainable modes of transportation.

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

Objective 3.4: Provide environmental stewardship to improve air quality, enhance resource efficiency, and address climate change

Strategic Plan Goal 4: Create a workplace that delivers outstanding service.

Objective 4.2: Create a collaborative and innovative work environment.

This action supports the following SFMTA Transit First Policy Principles:

Transit First Policy 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.

BACKGROUND

The SFMTA operates the Municipal Railway (Muni), San Francisco's public transportation system. Muni operates 24 hours a day, 365 days a year. The SFMTA operates a fleet of approximately 900 buses (diesel, hybrid electric, and electric trolley buses), 148 LRV2/3 (Breda) vehicles, 68 LRV4 (Siemens) vehicles, and approximately 100 other rail vehicles, including cable cars and historic streetcars, which consist of Milan, Presidents Conference Committee (PCC) cars, and "Vintage" cars.

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Based on typical annual ridership, Muni is the seventh largest system in the United States, and the San Francisco Bay Area's largest and most heavily used public transit system, transporting approximately 45 percent of all transit passengers in the region during normal operation. Prior to the outbreak of the Covid-19 pandemic, Muni averaged approximately 700,000 weekday boardings (in excess of 230 million trips per year in Fiscal Year 2018/19). Muni's normal fixed route network consists of 50 motor coach lines, 14 electric trolley bus lines (i.e., rubber-tired vehicles that operate on electricity provided from overhead wires), six light rail lines that operate above ground and in the City's Market Street subway tunnel, three cable car lines, and two historic streetcar lines. The SFMTA, through a contract with a broker, also provides paratransit service for passengers who are unable to use fixed route service.

Muni's infrastructure is composed of more than 200 miles of underground feeder cables and over 70 miles of trackway for rail vehicles and cable cars. Muni also maintains some 200 miles of overhead electric lines, 10,000 support poles, and over two million square feet of maintenance, warehouse, and repair facilities.

The Transit Division is currently undergoing a comprehensive series of capital projects to expand, overhaul, replace, upgrade, rehabilitate, and supplement its fleet of transit vehicles. The SFMTA's primary objective under this RFP is to obtain resources and expertise to support the Transit Division in the procurement, rehabilitation, maintenance and operation of the fleet, as well as additional support services for transit-related equipment, Maintenance of Way, and various transit systems and facilities. These contracts will also replace two current existing as-needed engineering contracts, one for bus, and one for rail, which are due to expire soon. A bench of three consultants will provide the best flexibility for the SFMTA, rather than dividing the scope into bus and rail. A task will be awarded to the firm who has the most qualified staff available at the time the service is needed.

SCOPE

The selected consultants will provide a broad range of specialized services and staff to complete task orders issued by the SFMTA, either by direct assignment of its own personnel or through subconsultants, including, but not limited to, initial planning and programming, specialized analytical studies, construction support and management, and start-up and operations planning.

PROCUREMENT

On April 14, 2020, the SFMTA issued a Request for Proposals (RFP) to obtain qualified consultants to provide the as-needed specialized consulting services discussed above.

On May 28, 2020, the SFMTA received five proposals from:

- Jacobs Engineering Group Inc (Jacobs),
- LTK Engineering Services (LTK),
- STV Incorporated (STV),

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- SYSTRA Consulting, Inc. (SYSTRA), and
- WSP USA Inc. (WSP).

The SFMTA formed a technical evaluation panel and a price evaluation panel to review the initial proposals. Both panels scored the proposals and found them all to be within a competitive range. The SFMTA opted to conduct oral interviews to aid in selecting the top three proposers.

On July 28, 2020 and July 29, 2020, the SFMTA held oral interviews with each of the proposers to address technical questions and any outstanding concerns by the technical panel. The proposers’ responses to the oral interview questions were scored by the technical evaluation panel, and each proposer was assigned a final score.

The SFMTA conducted negotiations with the three highest-ranked firms and recommends awarding three contracts—Contract Nos. 2020-48, 2020-49 and 2020-50—each with a maximum amount of \$5,000,000 and a maximum term of five years, with four one-year options. The three contracts are as follows:

| Contract Number | Not to Exceed Amount | Firm Name |
|------------------------|-----------------------------|-------------------------------|
| SFMTA-2020-48 | \$5,000,000 | Jacobs Engineering Group Inc. |
| SFMTA-2020-49 | \$5,000,000 | STV Incorporated |
| SFMTA-2020-50 | \$5,000,000 | WSP USA Inc. |

The subcontractors under each selected vendor and their provided services are as follows:

| Jacobs Engineering Group Inc. | Subcontractors | Services |
|--------------------------------------|---|--|
| | Virginkar & Associates Incorporated (SBE/WBE) | Contract Support, Quality Assurance and Testing |
| | Wilson Ihrig (SBE) | Noise and Vibration |
| | Triunity, Inc. (DBE) | Scheduling and Cost Estimating |
| | Raul V. Bravo (DBE) | Operations Planning, Scheduling and Analysis |
| | RQS, Inc. (SBE) | Testing and Inspection |
| | Luster National (SBE) | Environmental Social Justice and Public Outreach |
| | Ikos Consulting | Verification and Validation |
| | RSE (SBE) | Field Surveying and Maintenance of Way |
| | Ambient Energy (SBE/WBE) | Facilities and Energy Analysis |

| | Subcontractors | Services |
|--|-----------------------|-----------------|
|--|-----------------------|-----------------|

| | | |
|-------------------------|--|--|
| STV Incorporated | Capitol Government Contract Specialist (SBE/WBE) | Vehicle Procurement and Rehabilitation |
| | Global Innovations, U.S. A.(SBE) | FTA Compliance |
| | Jade Associates (SBE/WBE) | Vehicle Procurement and Maintenance |
| | Telamon Engineering Consultants (WBE) | Engineering Services |
| | Turner Engineering Corp (SBE) | Testing and Commissioning |
| | Virginkar & Associates Incorporated (SBE/WBE) | Vehicle Procurement and Rehabilitation |
| | Wilson Ihrig (SBE) | Noise and Vibration |

| | | |
|---------------------|--|---|
| WSP USA Inc. | Subcontractors | Services |
| | Raul V. Bravo (DBE) | Rail Vehicle Test and Commissioning |
| | Virginkar & Associates, Inc. (SBE/WBE) | Reliability/Maintainability and Safety |
| | Chaudhary (SBE) | Surveying |
| | Parsons | Vehicle and System Engineering |
| | Turner Engineering Corp (SBE) | EMI/EMC Testing |
| | Capitol Government Contract Specialist (SBE/WBE) | Quality Control and Maintenance Support |
| | The Solis Group (SBE/WBE) | Project Controls and FTA Compliance |
| | Wilson Ihrig (SBE) | Noise and Vibration |
| | ARC (DBE/WBE) | Asset Management and Contract Admin |

STAKEHOLDER ENGAGEMENT

Various divisions within Transit, such as Maintenance of Way, Vehicle Maintenance, Service Planning, and Scheduling were involved in defining the scope of services to be delivered under this agreement and in the evaluation of the proposers.

ALTERNATIVES CONSIDERED

These contracts will replace the two existing as-needed contracts for bus and rail, which are due to expire soon and cannot be extended. It is the policy of the SFMTA Transit Division to be staffed sufficiently to perform the essential work of the Division. However, due to the variety and

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specialization of this work, people with the required skills and experience are not always readily available. Staff has determined that this contract is the best possible solution to provide the needed support to the Agency. Consultant personnel also have the expertise from having worked in various other transit properties, which will ultimately benefit SFMTA.

FUNDING IMPACT

Task orders under this contract will be funded through existing approved budgets for capital projects requiring services. Funding for these as-needed tasks will come from federal, state and local grants, and operating funds. Each task will be fully funded prior to task issuance.

ENVIRONMENTAL REVIEW

On October 3, 2020, the SFMTA, under authority delegated by the Planning Department, determined that Contract Nos. SFMTA-2020-48, SFMTA-2020-49, and SFMTA-2020-50 are not “projects” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Staff obtained approval for the contract from the Civil Service Commission by PSC No. 44741-19/20 on September 16, 2019.

The Contract Compliance Office has set a Small Business Enterprise (SBE) goal of 21% and a Woman-owned Disadvantaged Business Enterprise (WBE/DBE) goal of 4% for this project.

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

RECOMMENDATION

Staff recommends that the SFMTA Board authorize the Director of Transportation to execute Contract No. 2020-48 with Jacobs Engineering Group Inc., Contract No. 2020-49 with STV Incorporated, and Contract No. 2020-50 with WSP USA Inc., to provide as-needed specialized consulting services to support the SFMTA’s Transit Division staff in the procurement, rehabilitation, and maintenance of its transit vehicle fleet and related systems and facilities, in an amount not to exceed \$5,000,000 for each contract, and for a term for each contract not to exceed five years, with four one-year options..

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, the San Francisco Municipal Transportation Agency (SFMTA) wishes to obtain qualified consultants to provide as-needed specialized consulting services to support its Transit Division staff in the procurement, rehabilitation, and maintenance of its transit vehicle fleet, transit-related equipment, Maintenance of Way, and various transit systems and facilities; and

WHEREAS, On April 14, 2020, the SFMTA issued a Request for Proposals (RFP) for three as-needed engineering contracts, Contract No. SFMTA-2020-48, Contract No. SFMTA-2020-49, and Contract No. SFMTA-2020-50, each for a contract amount not to exceed \$5,000,000 and a term not to exceed five years, with four one-year options; and

WHEREAS, By May 28, 2020, the SFMTA received proposals in response to the RFP from Jacobs Engineering Group Inc., WSP USA Inc., LTK Engineering Services, STV Incorporated, and SYSTRA Consulting, Inc.; and

WHEREAS, A Selection Committee evaluated the five proposals and selected Jacobs Engineering Group Inc, STV Incorporated, and WSP USA Inc. as the three highest-ranking proposers; and

WHEREAS, Federal, state, and local sources will provide funding for the services on an as-needed, project-by-project basis; and

WHEREAS, The Contract Compliance Office has confirmed the consultants' commitment to meeting the 21% Small Business Enterprise participation goal and a Woman-owned Disadvantaged Business Enterprise goal of 4% for this contract; and

WHEREAS, On October 3, 2020, the SFMTA, under authority delegated by the Planning Department, determined that Contract Nos. SFMTA-2020-48, SFMTA-2020-49, and SFMTA-2020-50 are not "projects" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

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

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2020-48 with Jacobs Engineering Group Inc., to provide as-needed specialized consulting services to support its Transit Division staff in the procurement, rehabilitation, and maintenance of its transit vehicle fleet, and related systems and facilities, for a total amount not to exceed \$5,000,000 and a maximum term of five years, with four one-year options; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2020-49 with STV Incorporated, to provide as-needed specialized consulting services to support its Transit Division staff in the procurement, rehabilitation, and maintenance of its transit vehicle fleet and related systems and facilities, for a total amount not to exceed \$5,000,000 and a maximum term of five years, with four one-year options; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2020-50 with WSP USA Inc., to provide as-needed specialized consulting services to support its Transit Division staff in the procurement, rehabilitation, and maintenance of its transit vehicle fleet, and related systems and facilities, for a total amount not to exceed \$5,000,000 and a maximum term of five years, with four one-year options.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 17, 2020.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

Contract Nos. SFMTA-2020-48

As-Needed Specialized Vehicle Engineering and Other Related Consulting Services Agreement

**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

Jacobs Engineering Group Inc.

For

**AS-NEEDED SPECIALIZED VEHICLE ENGINEERING AND
OTHER RELATED CONSULTING SERVICES**

Contract No. SFMTA-2020-48

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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
Jacobs Engineering Group Inc.
Contract No. SFMTA-2020-48**

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

Recitals

A. The SFMTA wishes to obtain qualified consultants to provide as-needed specialized vehicle engineering services to supplement the Transit Division staff in the support of the procurement, rehabilitation, maintenance and support of its transit vehicle fleet, transit related equipment, maintenance of way, various transit systems and facilities.

B. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21 through a Request for Proposals (RFP) issued on April 14, 2020, pursuant to which City selected Contractor as one of the highest-qualified scorers.

C. The Small Business Enterprise (SBE) subcontracting participation requirement for this Agreement is 21%, and the Woman-owned Business Enterprise (WBE) subcontracting participation requirement for this Agreement is 4%.

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 No. 44741-19/20 for this Agreement on September 16, 2019.

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

1.2 “**CCO**” means SFMTA Contract Compliance Office.

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

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

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

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

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

1.8 “**Contractor**” or “**Consultant**” means Jacobs Engineering Group Inc., 4 Embarcadero Center Suite 3800, San Francisco, CA 94111.

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

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

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

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

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

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

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

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

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

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

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

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

1.21 “**Woman’s Business Enterprise**” or “**WBE**” means a disadvantaged business enterprise (DBE), as defined in 49 CFR Section 26.5, that is at least 51 percent owned by women, or, in the case of a corporation, in which 51 percent of the stock is owned by women. See also Appendix E.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the later of: (i) November 1, 2020; or (ii) the Effective Date, and expire on October 31, 2025, unless earlier terminated as otherwise provided herein.

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

Article 3 Financial Matters

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

new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.3 Compensation.

3.3.1 Amount. Compensation under this Agreement shall be based on either a negotiated lump sum price per task or subtask, or actual direct costs plus a negotiated fixed profit per subtask and task. In no event shall the amount of this Agreement exceed Five Million Dollars (\$5,000,000).

3.3.2 Method of Computing Compensation

a. Direct Labor Rates. The direct labor rates in Appendix B shall be fixed at that level until 12 months after the Effective Date. Direct Salary Rates in Appendix B may be adjusted 12 months after the Effective Date. No single rate may be increased by more than three percent without prior written approval of the SFMTA.

b. Overhead. The Consultant's compensation under this Agreement will be based on and shall not exceed the combined overhead and salary burden rates as shown on the Calculation of Charges attached as Appendix B. The rates in Appendix B may be adjusted annually with prior written approval from the Project Manager. The Consultant's and Subconsultants' combined overhead and salary burden rates are subject to audit in compliance with Federal requirements.

The overhead rates attached as Appendix B, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within 180 Days of the end of Consultant's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Consultant shall submit to the Project Manager Consultant's and all Subconsultants' actual rates during the term of this Agreement. For each rate paid to the Consultant that exceeds the Consultant's or any Subconsultant's actual rate, the Consultant shall reimburse to the City the total difference between the rate paid and Consultant's or Subconsultant's actual rate during the term of this Agreement. Consultant shall reimburse

City within 30 Days of written notice from City seeking reimbursement. For each actual overhead rate of Consultant or Subconsultant that exceeds the rate paid to Consultant, City shall pay to Consultant the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Consultant within 60 Days of City's receipt of all of Consultant's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Consultant's rates as provided above.

c. Reimbursable Costs. This Agreement is subject to federal regulations concerning the reimbursement and audit of expenses, costs and overhead as set forth in the "Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards," 2 CFR Part 200 et seq., and, for for-profit organizations, the cost principles in 48 CFR Part 31 (collectively, the Federal Cost Requirements). The Consultant acknowledges that it is familiar with the Federal Cost Requirements. Consultant shall not seek reimbursement and the City shall not pay reimbursement to Consultant for costs (including but not limited to direct costs, indirect costs, and overhead) that are not compensable under the Federal Cost Requirements. Consultant understands and acknowledges that the City shall not reimburse Consultant for Consultant's costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments to Consultant 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 Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses are to be pre-approved by the SFMTA, and Consultant must obtain the best air fare available in a timely fashion. All travel receipts must accompany the invoice.

e. Non-Reimbursable Expenses. Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for the services of this Agreement. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable.

f. Use of Public Transportation. San Francisco is a transit-first city, and the SFMTA encourages Consultant and Subconsultants to use public transit in performance of its services to the maximum extent possible. The SFMTA will closely review the Consultant's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Transportation network companies and hired

cars (other than taxis) 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 Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B (Calculation of Charges), attached hereto and incorporated by reference as though fully set forth herein. Compensation shall be made for Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. The City will make payment within 30 Days of receipt of the invoice, unless the City notifies the Contractor that a dispute or correction as to the invoice exists. The breakdown of labor and overhead rates associated with this Agreement appears in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

3.3.4 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. The City may reject Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement; in such a case, Contractor must replace the non-conforming work without delay and at no cost to the City.

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

3.3.6 Invoice Format. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. The Consultant shall submit invoices for all allowable charges incurred in the performance of each Task Order. No more than one invoice per task shall be submitted in a month. The Consultant shall submit invoices containing the following information:

- (a) Contract Number;
- (b) Task Order Number;
- (c) Description of the work performed or services rendered;
- (d) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced;
- (e) Other direct costs;
- (f) Subconsultant costs supported by invoice itemization in the same format as described here;

- (g) Fixed Fee for current invoice period and amount of Fixed Fee as of date of invoice. Fixed Fee will be calculated as a prorated portion of the total fixed fee for the task for which Consultant seeks payment;
- (h) Total costs;
- (i) SFMTA Form No. 6 – Progress Payment Report.

3.3.7 Required Form for Payment. The City is not authorized to pay invoices submitted by Consultant prior to Consultant’s submission of the completed SFMTA Progress Payment Report (Form No. 6). Consultant shall pay its Subconsultants within three Working Days after receiving payment from the SFMTA, except as otherwise authorized by the SBE/DBE Program (see Appendix E). If the Progress Payment Report is not submitted with Consultant’s invoice, the SFMTA may withhold 20 percent of the approved payment due pursuant to that invoice until the SFMTA Progress Payment Report is provided. Following the SFMTA’s payment of an invoice, Consultant must submit, within five Days, a verification of its payments to Subconsultants for the work they have performed via the SFMTA’s B2GNow System (<https://sfmta.diversitycompliance.com/>). Failure to provide such verification shall be cause for the SFMTA to suspend progress payments to Consultant.

3.3.8 Getting Paid for Goods and/or Services from the City.

a. All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City’s Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

b. The following information is required to sign up: (i) The enroller must be their company’s authorized financial representative, (ii) the company’s legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company’s U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company’s bank account information, including routing and account numbers.

3.3.9 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). 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 Term and the other provision(s), the Grant Term shall apply.

c. Flow-Down. 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 excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

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

3.6 Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

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

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

4.3 Presentations. In the performance of assigned tasks, the Consultant, 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 Task Requirements. The SFMTA will define task requirements. The cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below.

4.4.1 Scope of Work. The SFMTA will prepare the scope of work and expected time of completion using the Task Order Request Form (Appendix C) and transmit the Task Order Request Form to the Consultant with a request for a proposal for the performance of the task. The Task Order Request Form will be finalized upon successful negotiation of the task.

4.4.2 Consultant Proposal. The Consultant shall prepare and submit a proposal for the task showing:

- a.** A work plan that includes a detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;
- b.** Milestones for completion for each subtask and deliverables at each milestone;
- c.** Personnel and the Subconsultants assigned to each part of the work, along with résumés or curriculum vitae that indicates why each of the personnel are qualified to perform the work; and prior experience in performing work of this nature; if not included in the original proposal;
- d.** A detailed cost estimate for each task or subtask showing:
 - (i)** Estimated hours and direct salaries by position (hourly rates by position as listed in Appendix B for both Consultant and Subconsultant personnel). Labor hours for preparing monthly invoices or filling out required SBE forms will not be allowed. Consultant will manage Subconsultants so additional Subconsultant program management labor hours will not be allowed. Overtime labor hours will not be allowed without prior written

approval. If overtime is approved, it will be billed at the basic billing rates listed and not at one and one half times the billing rate;

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

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

(iv) Proposed profit as follows:

- Proposed profit of Consultant's work effort as a fixed fee amount not to exceed seven percent of Consultant's estimated direct salaries and overhead costs; and
- For work performed by all Subconsultants, proposed total mark-up for Consultant on Subconsultant's work effort as a fixed fee not to exceed three percent of Subconsultant's total labor charges.

4.4.3 Negotiation of Cost and Profit. The Project Manager will review the proposal and negotiate either a lump sum price or a fixed profit to perform the work of each subtask and task and either a total price or a total not to exceed cost for the task.

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

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

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

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

4.4.8 Changes. Agreed lump sum prices and fixed profits for subtasks and tasks cannot be modified unless there is a material change in the scope of work of the task. If there is a material change in the scope of work of a task, then a proposal, negotiations, and

Record of Negotiations shall be required before changes to agreed lump sum prices and fixed profits can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

4.4.9 Failure to Agree on Terms of Task. In the event that the SFMTA and Consultant 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 Consultant 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 Consultant refuse to undertake a City-ordered task.

4.5 Key Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Consultant's authorized Subcontractors) to perform the Services. Contractor shall comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement. Contractor agrees that the following key team members (Key Personnel) shall be committed and assigned to provide services under this Agreement to the level required by the SFMTA for the term of the Agreement and shall also be staffed at the local Consultant offices within the San Francisco Bay Area for all such time (unless otherwise agreed to by the SFMTA in writing):

- Scott Witt – Project Manager; Facility Assessment
- Joseph Deery – Principal-in-Charge
- Joseph Speaks – Policy/Planning/Study Support
- Brenden Policarpio, PE – Vehicles; Engineering
- Antonino Genoese, PE – Civil and Structures
- Jordan Reynoldson – Testing/Commissioning
- Lee Khumalo – Project Quality/Inspection
- Brin Owen – ITS; Fare Collection and Data Management
- Shawn Merchant, EIT – Engineering

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

4.6 Current Workload and Available Resources. The Consultant covenants that its current workload and the workload of its Subconsultants will not affect the commencement and the progress of the work under this Agreement. The Consultant 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 Consultant shall make good faith efforts to have all contracts

signed with Subcontractors within three weeks of NTP. Consultant shall provide copies of said subcontracts to the SFMTA upon request.

4.7 Transmittal of Work Product. When requested by Agency's Project Manager, and after completion of each task and subtask, the Consultant shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its Subconsultants' work on this Agreement. The Consultant'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.

4.8 Reserved (Reproduction of Work Product).

4.9 Agency's Responsibilities Regarding Submittals. The Agency will review and comment on Consultant's submittals generally within two calendar weeks of submittal. The Agency and Consultant 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 Consultant submittals shall in no way relieve the Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Consultant of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

If Consultant 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 Consultant 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 4.5.2 above.

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

- Ambient Energy
- Ikos Consulting, Inc. (Ikos)
- Luster National, Inc. (Luster)
- Railcar Quality Services, Inc. (RQS)
- Rail Surveyors and Engineers, Inc. (RSE)
- Raul V. Bravo + Associates, Inc. (RVB+A)
- Triunity Engineering & Management, Inc. (Triunity)

- Virginkar & Associates, Inc. (Virginkar)
- Wilson Ihrig

4.11 Independent Contractor; Payment of Employment Taxes and Other Expenses

4.11.1 Independent Contractor. For the purposes of this Article 4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.11.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and

offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.12 Assignment. The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

Article 5 Insurance and Indemnity

5.1 Insurance.

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

- a.** Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- b.** Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- c.** Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

d. Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

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

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

e. Reserved. (Cyber and Privacy Coverage).

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

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

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

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

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

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

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

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

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

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

5.2 Indemnification for Design Professionals. To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

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

5.2.2 Intellectual Property Infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of 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.

5.2.3 Severability Clause Specific to Indemnification and/or Defense Obligations. To the extent any Court of competent jurisdiction invalidates any word, clause, phrase, or sentence herein that word, clause, phrase, or sentence, and no other portion, shall be deemed removed from this section. All other words, clauses, phrases and/or sentences remain enforceable to the fullest extent permitted by law.

Article 6 Liability of the Parties

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

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

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

Article 7 Payment of Taxes

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

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

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

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

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

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

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. The City will pay Contractor any monies withheld under this paragraph, without interest, when Contractor comes 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. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and

City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

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

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

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

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

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

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

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

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

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

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

d. A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to the

SFMTA, and any other appropriate credits to the SFMTA against the cost of the Services or other work.

8.1.4 In no event shall the City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by the SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Services covered by Contractor's final invoice; (ii) any claim which the SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and the SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

8.2 Termination for Default; Remedies.

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

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

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

b. Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by

ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from the SFMTA to Contractor.

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

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

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

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

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

8.3 Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or

provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

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

| | |
|------------|--|
| 3.3.4 | Payment Limited to Satisfactory Services |
| 3.3.9 | Grant-Funded Contracts |
| 3.4 | Audit and Inspection of Records |
| 3.5 | Submitting False Claims |
| Article 5 | Insurance and Indemnity |
| 6.1 | Liability of City |
| 6.3 | Liability for Incidental and Consequential Damages |
| Article 7 | Payment of Taxes |
| 8.1.6 | Payment Obligation |
| 9.1 | Ownership of Results |
| 9.2 | Works for Hire |
| 11.6 | Dispute Resolution Procedure |
| 11.7 | Agreement Made in California; Venue |
| 11.8 | Construction |
| 11.9 | Entire Agreement |
| 11.10 | Compliance with Laws |
| 11.11 | Severability |
| Article 13 | Data and Security |

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

Article 9 Rights In Deliverables

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

Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

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

Article 10 Additional Requirements Incorporated by Reference

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

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

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

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed

or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Small Business Enterprise Program.

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

10.6.2 Compliance with SBE Program. Consultant 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 and completing all required SBE/DBE forms. Failure of Consultant 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, Consultant is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure nondiscrimination in Consultant's employment practices.

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

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this Contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.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 Chapter 12Q, 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 Chapter 12Q. 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 agrees to comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

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

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) 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, (c) a candidate for that City elective office, or (b) 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 Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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

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

10.17 Reserved. (Distribution of Beverages and Water)

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

10.19 Reserved. (Preservative-Treated Wood Products).

Article 11 General Provisions

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

To City: Janet Gallegos
San Francisco Municipal Transportation Agency
Program Delivery and Support Manager
Muni Metro East Facility, 601 25th St,
San Francisco, CA 94107
janet.gallegos@sfmta.com

To Contractor: Scott Jones
Jacobs Engineering Group
4 Embarcadero Center Suite 3800
San Francisco, CA 94111
scott.jones@jacobs.com

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

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

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

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

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

11.6 Dispute Resolution Procedure.

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

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10

and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

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

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

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

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

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated May 28, 2020. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, implementing task orders shall control over the RFP, and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms

attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

Article 12 SFMTA Specific Terms

12.1 Large Vehicle Driver Safety Training Requirements.

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

12.1.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information . If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative

Code Chapter 12M, Contractor and Subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

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

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

13.3 Reserved. (Business Associate Agreement)

13.4 Management of City Data and Confidential Information.

13.4.1 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.

13.4.2 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.4.3 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information, including all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor

shall, within 10 business days, purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, 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 business days of the purge.

Article 14 MacBride Principles And Signature

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

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

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|---|--|
| <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, MTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p> | <p>CONTRACTOR</p> <p>Jacobs Engineering Group Inc.</p> <hr/> <p>Scott Jones Vice President</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: 0000017861</p> |
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Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form
- D: Federal Transit Administration (FTA) Requirements
- E: SBE/DBE Program

Appendix A

Scope of Services

1. Description of Services

The Consultant shall provide as-needed specialized consulting services for various projects, including the implementation and completion of various transit vehicle and transit-related equipment procurements, maintenance-of-way projects, operational scenario model projects, asset management projects, service planning projects, various transit system projects, and rehabilitation and replacement projects. Services may include design analysis, structural finite element analysis, engineering calculations, quality control inspection, feasibility studies, administrative support, vehicle acceptance and testing, warranty administration, and cost analyses. The Consultant may be asked to perform other tasks related to the maintenance and operation of the transit vehicles and facilities, including assisting with fare collection, the advanced train control system (ATCS), data communications, the passenger information system, vehicle telematics systems, charging infrastructure software systems, and associated equipment.

The SFMTA will decide, in its sole discretion, which tasks to assign to the Consultant. The SFMTA may use qualified City staff to the extent possible to provide the technical engineering and quality control services. The services to be provided by the Consultant at the direction and to the satisfaction of the SFMTA may include the following:

A. Task 1: Project Management

The Consultant shall support the SFMTA in the day-to-day execution of projects related to its transit vehicles, systems and services. Deliverables may include the following:

1. Project Management Plan (PMP)

Develop, implement, and maintain the PMP for transit-related projects, including all related and supporting management documents.

2. Progress Reports

Provide a series of reports that will summarize the progress of activities. The reports should also track any issues that may have occurred during the past reporting period, their status and resolution. Reports may include, but not be limited to: bi-weekly reports, monthly reports, quality assurance reports, trip reports, Federal Transit Administration (FTA) Quarterly Reports, and other reports required by funding agencies.

3. Meetings

Schedule, attend, and document meetings, conference calls, and other review sessions.

4. Documentation

Prepare documentation (letters, reports, presentations).

5. Tracking Systems

Set up and maintain systems to track all project information to allow a project to be effectively managed. Items to be tracked include correspondence, actions, and change orders.

6. Stakeholder Outreach

Prepare presentations, reports, and responses to requests from stakeholders, such as the FTA.

B. Task 2: Contract Management

The Consultant shall support the SFMTA Project Manager in managing the projects related to its transit vehicles, systems and services, including performing tasks such as:

1. Contract Management

Support oversight and enforcement of bus and rail vehicle procurement and rehabilitation contracts, including verification of requirements, change orders, deliverables, claims, and payments.

2. Schedule Management

Support development and maintenance of the overall project schedules for a variety of fleet-related projects, including oversight of the bus and rail vehicle procurement and rehabilitation schedule, and other transit-related technology projects, such as advanced train control systems. In addition, support integration of the fleet-related project schedules into other projects, such as the Central Subway, Passenger Information System, Clipper 2.0, and Better Market Street projects.

3. FTA Compliance

Conduct reviews, as needed, to verify that the bus and rail vehicles and equipment conform to their respective contract requirements and technical specifications, as well as all federal, state and local requirements. Activities and deliverables may include:

- a. Pre-award and post-delivery Buy America audits, in compliance with 49 CFR Part 663.

- b. Other audits and reviews, as required, to verify that the bus and rail vehicle procurement and rehabilitation contracts are being performed in accordance with all applicable federal, state and local requirements.

4. Cost Estimates

Prepare independent cost estimates and cost analyses for any proposed contracts or contract changes (in accordance with FTA requirements, as applicable); identify responsibilities for the changes, and advise on any resulting impacts in scope, schedule and budget.

C. Task 3: Design Reviews and Evaluation of CDRLs and Submittals

Consultant shall support the SFMTA in the review, outreach and response to submittals from rolling stock and other contractors, including letters, drawings, design review packages and other Contract Deliverable Requirements List (CDRL) items.

1. Specialized Experts

Provide specialized experts, as-needed, to cover all vehicle systems, as well as risk assessments, hazard analyses, reliability analyses and systems integration, among others.

2. Submittal Review and Response

Review and comment on CDRL Items. Review the submittals for compliance with the specifications and meet the project objectives for quality, reliability and maintainability; recommend disposition to the SFMTA. Work with the project team to drive consensus among internal stakeholders to develop an agreed SFMTA position on issues as they arise.

3. System Integration

Support the SFMTA during planned systems integration reviews to ensure that the vehicle and subsystems perform according to the SFMTA's requirements and expectations, including addressing interface issues with concurrent projects, such as Central Subway, Passenger Information System, Clipper 2.0, and Better Market Street.

4. First Article Inspection

Coordinate, attend and oversee First Article Inspections (FAI) for the entire vehicle, including subsystems, establishing a baseline upon which the production units will be based, and changes in configuration will be assessed.

5. Issue Resolution

Conduct research into peer agencies, best practices, required standards, and federal, state and local requirements to provide advice and counsel with regards to issues that may arise. Reports or presentations shall be provided as requested by the SFMTA.

D. Task 4: Quality Assurance (QA) Oversight

The Consultant shall provide QA oversight services to ensure that quality material is used, good workmanship is performed, and work is conducted in accordance with all plans and contract documents, as well as federal, state and local requirements. Activities and deliverables may include:

1. QA Program Oversight

Review the applicable QA programs to assure that the contractor's QA organization follows contractually required processes for controlling the quality of the design, tooling calibration, receiving inspection, corrective actions, and the manufacturing process.

2. QA Production Oversight

Conduct checks, as necessary, to assure that quality records are maintained throughout the manufacturing process at both supplier and subcontractor facilities. Assess quality trends and review with SFMTA staff and the contractor to determine any corrective actions.

3. Quality Assurance Representative

Provide a Quality Assurance Representative (QAR) to provide daily (or weekly) written inspection reports as required by the SFMTA. The QAR will use SFMTA-approved procedures to note any deficiencies and corrective actions required.

4. QA Change Management Oversight

Review the contractor's change control, configuration management, and document management systems to verify that they are capable of complying with the contract provisions and are able to monitor changes from the baseline specification.

5. Receiving Inspection

Provide incoming or receiving inspection at the SFMTA delivery location to determine whether vehicles or equipment have been damaged in transport or at any other time.

E. Task 5: Test Program Oversight

The Consultant shall provide “test program oversight” services to ensure that the prototype bus and rail vehicles, production vehicles, and rehabilitated bus and rail vehicles perform according to the vehicle contract requirements and technical specifications, including all federal, state and local requirements. Activities and deliverables may include:

1. Test Documentation Review

Review and recommend for acceptance the test and evaluation plans and procedures for all materials, components, subsystems, and completed work requiring testing under the specifications.

2. Test Witnessing

Witness design, qualification, acceptance and burn-in tests, as required, including tests at contractor’s or its subcontractors’ facilities, the SFMTA site, or third party location.

3. Vehicle Acceptance

Support the SFMTA in acceptance inspection and testing efforts. Once a vehicle or equipment has been delivered to the SFMTA but before it is accepted, Consultant shall perform a final audit to verify that the necessary documentation (e.g., weight certificates, Car History Book) is provided with the vehicles.

4. Operational Testing

Support operational testing to confirm compatibility with the SFMTA’s existing system, facilities, and equipment; assist with operator orientation.

F. Task 6: Commissioning and Start-up Activities

The Consultant shall support commissioning and start-up activities prior to the start of revenue service for the new vehicle or equipment. Activities and deliverables may include:

- 1.** Review and comment on all support services submittals, including maintenance manuals, parts and operations manuals, training programs, and safety program plans.
- 2.** Verify delivery and configuration of as-built drawings and associated documentation.
- 3.** Support the training program, including testing and acceptance of the training simulator.
- 4.** Support safety certification of the advanced train control systems, the new rail fleet, and other rail systems in accordance with CPUC General Order 164-D; develop

checklists, conduct necessary verifications, obtain sign-off of responsible parties, and prepare mitigation plans, if necessary.

5. Support revenue readiness activities, including maintenance shop readiness, and verification that the vehicle design will meet its operational requirements for SFMTA routes, including range, gradeability and environmental issues.
6. Support coordination activities with interrelated projects, such as the Central Subway Project, ATCS upgrades, Passenger Information System, Clipper 2.0 and Better Market Street.

G. Task 7: Post-Delivery Support

Consultant shall assist the SFMTA in effectively developing and administering a technical support program as required. This program will cover all post-delivery support requirements, including warranty administration, manual updates and field modification management.

Activities and deliverables may include:

1. Ensuring that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided in accordance with the requirements of the applicable procurement contract.
2. Support the oversight and tracking of all field modification work, including review of documentation, verification of configuration management, QA oversight of re-work, re-testing, and spare parts reconfiguration.
3. Monitor the reliability program and work with the SFMTA and the contractor to assure compliance of the fleet with reliability requirements.
4. Assist in the set-up, execution, administration, and monitoring of the warranty program, including identification and resolution of fleet defects.
5. Ensure that the preventive maintenance process and operations and maintenance activities are clearly defined and complete.

H. Task 8: Operations and Maintenance Support

Consultant shall provide other services as-needed by the SFMTA's Transit Division to support the maintenance and operation of the transit vehicles. Activities may include:

1. Review plans, checklists and procedures related to vehicle preventive maintenance.
2. Perform preventive maintenance and inspection audits and reporting.
3. Evaluate and assist with the implementation of modern and cost-effective maintenance methods for vehicles.
4. Provide data analysis to identify spikes and shortfalls in vehicle performance.
5. Review and update operating procedures as necessary.
6. Assist in the development or updating of operating practices and procedures.

7. Perform technical evaluations and assist with the implementation of emerging technologies to improve operations and service delivery.
8. Perform strategic long-term planning of key operations issues.
9. Provide Transit Operations support, including scheduling analyses and service improvement analyses.

I. Task 9: Maintenance of Way

The Consultant shall provide a broad range of specialized services and staff to complete Task Orders issued by the SFMTA, either by direct assignment of its own personnel or through Subconsultants, including, but not limited to, initial planning and programming, specialized analytical studies, and start-up and operations planning. Task Orders may include:

1. Provide support to SFMTA's Maintenance-of-Way Engineering Unit, which includes planning, design review, and field investigation support of transit system improvements, including the traction power system, transit signaling system, and communication system to improve safety and service reliability. **The proposed support work is not intended to conflict with the services to be provided in the RFP for the As-Needed Engineering Services contracts to be issued by the SFMTA's Capital Projects and Construction Division.** The scope of work may also include:
 - a. Prepare design criteria to include and meet all applicable codes and standards.
 - b. Prepare alternate analyses and recommend overall design approaches.
 - c. Perform site investigations and functional analyses.
 - d. Review design packages (plans and specifications)
 - e. Provide technical administrative support (e.g., file drawings, meeting minutes, document control).
 - f. Incorporate SFMTA's QA program requirements into the design and construction packages.
 - g. Identify and develop special testing requirements, system cut-over plans, and start-up plans.
2. Assist in the preparation of procurement contracts for transit infrastructure components and systems; operating equipment; and long-lead items. The task shall include product research, specifying products, and performing alternative analyses.
3. Perform field surveys using licensed surveyors.
4. Prepare project management plans in accordance with FTA requirements.
5. Prepare QA oversight, audits, plans, training and assistance in accordance with FTA requirements.

6. Predict, analyze, prevent, and mitigate noise and vibration from transit operations and equipment, and design and monitor mitigation measures.
7. Perform testing as required by the City, including metallurgical, annual ultrasonic rail testing, and other testing requested by the SFMTA.
8. Perform preliminary and system hazard analyses, failure modes and effects analyses, single-point-of-failure analyses, hazard level classification, and safety certification of systems.
9. Perform systems analyses, including communications systems analyses, systems integration, safety processes, configuration management, and related work.
10. Perform start-up and commissioning of systems, including integration and pre-revenue “dry-run” testing, developing test procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses.
11. Provide oversight and required documentation to obtain certification of the SFMTA’s System Safety and Security Program per CPUC General Order (GO) 164-D. (General Order 164-D requires transit agencies who are building and operating rail fixed guideway systems to establish a System Safety and Security Program.) The scope of work may include:
 - a. Provide safety standards
 - b. Review the system safety program
 - c. Review the contractor’s hazard analyses
 - d. Develop Safety and Security Certification Plans
 - e. Lead Safety & Security Certification Review Committee SSCRC (ongoing)
 - f. Maintain the Audit Conformance Checklist (ongoing)
 - g. Review the safety requirements
 - h. Audit implementation of safety requirements
 - i. Audit resolution of hazards (ongoing)

J. Task 10: Transit Systems

The Consultant shall provide as-needed services supporting the operations and maintenance of existing transit information technology systems (e.g., ATCS, fare collection, communication), including tasks supporting the integration of different systems with each other. Tasks may include:

1. Concept of Operations / Lifecycle Planning

The Consultant shall advise the SFMTA on key issues relating to the most effective means to employ technology systems to assist in operations. This may include developing a procurement and lifecycle strategy.

2. Procurement Support

The Consultant shall conduct industry outreach and advise the SFMTA on the available firms and products for individual procurement efforts. This shall include supporting the request for information (RFI), request for qualifications (RFQ), and request for proposals (RFP) processes, in such ways as:

- a. Maintaining industry contacts and communicating with potential vendors on the SFMTA's behalf.
- b. Facilitating, organizing and staffing RFI or RFP pre-submission meetings.
- c. Facilitating and organizing vendor presentations.
- d. Advising the SFMTA on the nature of each vendor's offering.
- e. Drafting language for inclusion in the RFI, RFQ, RFP and sample contract documents.

3. Design Support

In the design phase of a technology procurement project, the Consultant shall review the system vendor's design documents and advise the SFMTA and the vendor on potential integration issues, discontinuity between the system design and the concept of operations, or potential design deficiencies. The Consultant shall suggest design solutions for these issues in the design phase so they may correct designs at a minimum of delay and expense to the project.

4. Quality Control

During the production/delivery phase of a technology procurement project, the Consultant shall support the SFMTA's quality control efforts to ensure the equipment being delivered is free from manufacturing or design defects.

5. Hardware Integration

During the design and engineering phases, the Consultant shall support the integration of the new system with the other systems present on the SFMTA's vehicles or in the SFMTA's facilities. The Consultant shall be ultimately responsible to the SFMTA for ensuring that the new system is fully integrated with existing systems to the specifications detailed in the Task Order.

During the production/delivery phase, the Consultant shall support the integration of the new system to the vendor's specifications and any additional specifications that other SFMTA consultants have developed. This support may include activities such as:

- a. Developing an installation/deployment plan compatible with daily SFMTA operations and maintenance.
- b. Overseeing the execution of the installation plan in coordination with the SFMTA Project Manager and operations managers

- c. Training any SFMTA staff as needed to support the installation

6. Innovative Solutions

Throughout the system lifecycle, the Consultant shall support SFMTA operations by designing innovative solutions that require integration between one or more existing systems on board vehicles, on the wayside, in the street environment, or in the control center. This support would not necessarily be connected to a new system procurement; rather, the SFMTA would be seeking advice on how to accomplish the SFMTA's stated goals with existing equipment. The Consultant shall suggest modifications to that equipment, or additional purchases to support the SFMTA's goals.

7. List of Systems

Potential systems requiring the support of as-needed services include:

- a. Farebox Collection System
- b. Train Control Systems
- c. Surface Rail Signaling Systems
- d. Traffic Signals and Transit Signal Priority (TSP) systems
- e. Customer Information System
- f. On-Board Vehicle Signs and Announcement Systems
- g. Platform Signs and Announcement Systems
- h. Vehicle Telematics
- i. Charging Infrastructure Software Solution
- j. Automatic Passenger Counter system
- k. Video Surveillance systems
- l. Transit-Only Lane Enforcement (TOLE) System
- m. Collision Avoidance System
- n. DriveCam and SmartDrive systems (used for safety incident detection)
- o. Autonomous Vehicle Technology

K. Task 11: Other Services

Consultant shall provide other services as-needed by Transit Division for the implementation and completion of the Project. Tasks may include:

1. Advise the SFMTA on key issues regarding vehicle and equipment procurement, including compliance, systems integration and deviation from Contract requirements.
2. Support project integration into existing systems and emerging programs; these may include maintenance management systems, project management systems, asset management tracking, or other agency-wide systems.
3. Develop integration plans to ensure that the new vehicles or equipment operates as intended with the existing infrastructure, including track and overhead, substations, wheel rail interface, charging infrastructure and maintenance facilities.

- 4.** Support tasks for long-term fleet planning and replacement, including options, timing and procurement strategies required to maintain the fleet.
- 5.** Support with data collection efforts, such as ridership counts, traffic counts, and pedestrian counts.
- 6.** Support the Agency's Communications & Marketing Division with graphics for maps, posters, reports, one-pagers, marketing material, and other documents.
- 7.** Support data analyses pertaining to service planning activities, including before/after comparisons and trend analysis.
- 8.** Support the Agency's Communications & Marketing Division with outreach efforts, including facilitating meetings and providing logistical help and ambassador resources.
- 9.** Produce or assist with peer reviews and best practice reviews for activities such as off-wire operation, fallback scheduling, and emergency planning.
- 10.** Assist with asset management of transit equipment.
- 11.** Prepare fleet retirement plan to determine the best methodology, cost and schedule to retire vehicles as they are replaced and taken out of service.
- 12.** Conduct data analyses to identify spikes and shortfalls in vehicle performance.
- 13.** Produce or assist with the production of operational scenario models. Models may take into account available ridership, grade, or route data.

Appendix B
Calculation of Charges

Table 1: Direct Salary Hourly Rates by Positions for Consultant and all Subconsultants

| Direct Salary Rates | | | | Office or Field Billing Rate? Include only one. | |
|---------------------|-------------------------------|--------------------|--------------------|---|----------------------|
| Firm | Position | Name | Direct Hourly Rate | Office Billing Rate* | Field Billing Rate** |
| Jacobs | Program QA/QC | Jeff Benson | \$103.55 | \$206.49 | |
| Jacobs | Project Manager | Scott Witt | \$127.48 | \$254.21 | |
| Jacobs | Policy/Planning/Study Support | Joseph Speaks | \$ 97.38 | \$194.19 | |
| Jacobs | Vehicles Lead | Brenden Policarpio | \$ 72.02 | \$143.62 | |
| Jacobs | Civil and Structures | Antonino Genoese | \$ 83.34 | \$166.19 | |
| Jacobs | Testing/Commissioning | Jordan Reynoldson | \$ 72.76 | \$145.09 | |
| Jacobs | Testing/Commissioning | John Black | \$ 76.58 | \$152.71 | |
| Jacobs | Testing/Commissioning | Chris Hansard | \$ 74.52 | \$148.60 | |
| Jacobs | Project Quality Inspection | Lee Khumalo | \$ 75.72 | \$150.99 | |
| Jacobs | Project Quality Inspection | Carrie Cosby | \$ 57.55 | \$114.76 | |
| Jacobs | Engineering | Shawn Merchant | \$ 39.00 | \$77.77 | |
| Jacobs | Engineering | Tetiana Naumchuk | \$ 37.50 | \$74.78 | |
| Jacobs | Engineering | Greg Crocombe | \$103.15 | \$205.69 | |
| Jacobs | Engineering | Joseph Tax | \$ 34.06 | \$67.92 | |
| Jacobs | Engineering | Tara Brennan | \$ 68.96 | \$137.51 | |
| Jacobs | Engineering | Taka Ohki | \$ 71.51 | \$142.60 | |
| Jacobs | Engineering | Andrew Long | \$100.91 | \$201.22 | |
| Jacobs | Transit Systems | Lew Scott | \$ 97.21 | \$193.85 | |
| Jacobs | Engineering | Gavin Fraser | \$137.65 | \$274.49 | |
| Jacobs | Track Engineering | Michael Loehr | \$134.55 | \$268.31 | |
| Jacobs | Engineering | John Gregory | \$ 95.52 | \$190.48 | |
| Jacobs | Engineering | John Simon | \$ 93.63 | \$186.71 | |
| Jacobs | ITS, Fare Collection | Brin Owen | \$106.11 | \$211.59 | |
| Jacobs | Fleet and Ops Planning | David Solow | \$122.60 | \$244.48 | |
| Jacobs | TSSSA, Maintenance Planning | Hal Lindsey | \$111.81 | \$222.96 | |
| Jacobs | Facility Design | Steve Silkworth | \$ 79.59 | \$158.71 | |
| Jacobs | Electrification | Don Wagner | \$ 92.91 | \$185.27 | |
| Jacobs | Operational Programming | Wayne Galante | \$ 73.20 | \$145.97 | |
| Jacobs | Transit Oriented Development | Tom Hester | \$108.17 | \$215.70 | |
| Jacobs | Passenger Facilities | Matt Palzkill | \$ 52.04 | \$103.77 | |
| Jacobs | Transit Scheduling | John Roderick | \$ 72.88 | \$145.33 | |
| Jacobs | Transit FTA | Bill Tsiforas | \$111.63 | \$222.60 | |
| Jacobs | Transit Operations | Ryan Abbotts | \$ 93.41 | \$186.27 | |
| Jacobs | Transit Security | Bob Craig | \$ 86.40 | \$172.29 | |

| | | | | | |
|----------------------------|---|--------------------|----------|----------|--|
| Jacobs | Transportation Technology | Brian Burkhard | \$119.86 | \$239.01 | |
| Jacobs | Environmental | Lauren Abom | \$ 98.02 | \$195.46 | |
| Jacobs | Finance/Funding | Nishant Kukadia | \$ 98.90 | \$197.22 | |
| Jacobs | Renewable Energy | Andy Solberg | \$103.79 | \$206.97 | |
| Jacobs | Project Controls | Joe Whittle | \$ 60.06 | \$119.77 | |
| Jacobs | Document Support | Camren Cordell | \$ 49.19 | \$ 98.09 | |
| Jacobs | Systems Support | Julio Cartagena | \$ 49.92 | \$ 99.55 | |
| Jacobs | Propulsion | Marc DeSchamp | \$ 90.00 | \$179.47 | |
| Jacobs | Battery Technology | Chris Sulyma | \$ 67.15 | \$133.90 | |
| Jacobs | Engineering | Natasha Walia | \$ 65.22 | \$130.06 | |
| Jacobs | Engineering | Jessica Xie | \$ 36.54 | \$ 72.86 | |
| Jacobs | Engineering | Steve Briggs | \$ 62.03 | \$123.69 | |
| Jacobs | Systems Support | Efrain Merced | \$ 27.50 | \$ 54.84 | |
| Jacobs | Engineering | John Brundage | \$ 59.82 | \$119.29 | |
| Jacobs | Engineering | Dan Sheridan | \$ 54.00 | \$107.68 | |
| Wilson Ihrig | Senior Principal | James T. Nelson | \$ 93.63 | \$294.76 | |
| Wilson Ihrig | Principal | Pablo A. Daroux | \$ 78.04 | \$245.68 | |
| Wilson Ihrig | Principal | Derek L. Watry | \$ 78.04 | \$245.68 | |
| Wilson Ihrig | Principal | Deborah A. Jue | \$ 78.04 | \$245.68 | |
| Wilson Ihrig | Principal | James E. Phillips | \$ 74.68 | \$235.10 | |
| Wilson Ihrig | Principal | Gary M. Glickman | \$ 74.68 | \$235.10 | |
| Wilson Ihrig | Principal | Thom Bergen | \$ 74.68 | \$235.10 | |
| Wilson Ihrig | Associate Principal | Patrick E. Murphy | \$ 57.69 | \$181.61 | |
| Wilson Ihrig | Senior Consultant | Leisa E. Nalls | \$ 52.13 | \$164.11 | |
| Wilson Ihrig | Senior Consultant | Timothy M. Johnson | \$ 52.13 | \$164.11 | |
| Wilson Ihrig | Senior Consultant | Silas J. Bensing | \$ 52.13 | \$164.11 | |
| Wilson Ihrig | Associate | Patrick G. Faner | \$ 41.78 | \$131.53 | |
| Wilson Ihrig | Associate | Ani S. Toncheva | \$ 41.78 | \$131.53 | |
| Wilson Ihrig | Associate | Sarah E. Kaddatz | \$ 41.78 | \$131.53 | |
| Wilson Ihrig | Associate | Taylor N. Hays | \$ 41.78 | \$131.53 | |
| Wilson Ihrig | Associate | Luke S. Watry | \$ 41.78 | \$131.53 | |
| Wilson Ihrig | Assistant | Kurt R. Bell | \$ 34.48 | \$108.55 | |
| Wilson Ihrig | Account Manager | Joshua Beth | \$ 43.46 | \$136.82 | |
| Wilson Ihrig | Account Assistant | Francisco Rocha | \$ 31.87 | \$100.33 | |
| Wilson Ihrig | Project Assistant | Denise A. White | \$ 27.04 | \$ 85.12 | |
| RSE | Resident Inspector | Quynh Ho, PE | \$ 54.59 | \$121.18 | |
| RSE | Train Control Engineer/Signals and Communications | Tom Ryan | \$ 75.03 | \$166.55 | |
| RSE | Survey Manager | Cody Festa, LS | \$ 77.25 | \$171.48 | |
| RSE | ROW Manager | James Drenon, LS | \$ 77.31 | \$171.61 | |
| RSE | RSE Project Manager | Phil Leong, PE | \$ 96.39 | \$213.97 | |
| RSE | Project Engineer/Track Lead | Jennifer Ma, PE | \$ 90.60 | \$201.11 | |
| RSE | Project Engineer/Track Lead | Jorge Sanchez, PE | \$ 90.60 | \$201.11 | |
| RSE | Utilities/Drainage | Blake Clark, PE | \$ 86.01 | \$190.92 | |
| Virginkar & Associates Inc | Project Manager | Frank Guzzo | \$ 73.00 | \$164.13 | |

| | | | | | |
|----------------------------|---------------------------------|-------------------------|----------|----------|----------|
| Virginkar & Associates Inc | Vehicle Engineer | Arun M Virginkar | \$ 88.00 | \$197.85 | |
| Virginkar & Associates Inc | Integration Engineer | Jim Zehm | \$ 72.00 | \$161.88 | |
| Virginkar & Associates Inc | Quality Manager | Scott Rodda | \$ 88.00 | \$197.85 | |
| Virginkar & Associates Inc | Field Inspector | Ray Higuera | \$ 64.80 | | \$145.69 |
| Virginkar & Associates Inc | Field Inspector | Gary Guevin | \$ 53.30 | | \$119.83 |
| Virginkar & Associates Inc | Field Inspector | Clark Kidwell | \$ 53.30 | | \$119.83 |
| Triunity | Schedule/Planning | Steve Clevenger | \$ 64.00 | \$133.41 | |
| Raul V. Bravo | Inspector | Daniel Kelly | \$ 62.28 | | \$148.62 |
| Ikos | Inspector | Colin Sinclair | \$ 60.50 | | \$127.05 |
| Luster National | Principal In Charge | Laura Luster, PhD | \$ 72.11 | \$188.12 | |
| Luster National | DBE Compliance/Outreach Manager | Hubert Owens | \$ 72.12 | \$188.15 | |
| Luster National | Stakeholder Outreach Manager | Lupe Serrano | \$ 50.48 | \$131.69 | |
| RQS, Inc | Quality/Inspection | Lain L. Lee, Jr. | \$ 76.72 | \$161.11 | |
| RQS, Inc | Bus Inspector | Steve Swanson | \$ 56.23 | | \$118.08 |
| RQS, Inc | Bus Inspector | Glenn Boden | \$ 44.56 | | \$ 93.58 |
| RQS, Inc | Bus Inspector | Kelvin Warren | \$ 42.44 | | \$ 89.12 |
| RQS, Inc | Bus Inspector | Brad Erlandson | \$ 42.44 | | \$ 89.12 |
| RQS, Inc | Rail Inspector | David Perry | \$ 52.00 | | \$109.20 |
| RQS, Inc | Rail Inspector | Reynaldo Enriquez | \$ 55.97 | | \$117.54 |
| RQS, Inc | Rail Inspector | Carlos Torres | \$ 50.00 | | \$105.00 |
| RQS, Inc | Rail Inspector | Ryan Stewart | \$ 50.00 | | \$105.00 |
| Ambient Energy, Inc. | Principal | Renee Azerbegi | \$ 68.95 | \$201.82 | |
| Ambient Energy, Inc. | Project Accounting | Christina Seri | \$ 42.89 | \$125.54 | |
| Ambient Energy, Inc. | Cx Team Leader | Steven Anticknap | \$ 66.36 | \$194.24 | |
| Ambient Energy, Inc. | Senior Cx | Greg Evans | \$ 48.03 | \$140.58 | |
| Ambient Energy, Inc. | Cx II | Henry McElvery | \$ 48.08 | \$140.73 | |
| Ambient Energy, Inc. | Cx II | Adam Garnhart | \$ 37.02 | \$108.36 | |
| Ambient Energy, Inc. | BPE Team Leader | Linda Morrison | \$ 61.32 | \$179.48 | |
| Ambient Energy, Inc. | Senior BPE | Matt Steen | \$ 45.05 | \$131.86 | |
| Ambient Energy, Inc. | BPE II | John Kramer | \$ 43.48 | \$127.27 | |
| Ambient Energy, Inc. | SC Team Leader | Clayton Bartczak | \$ 48.76 | \$142.72 | |
| Ambient Energy, Inc. | SC II & Daylight | Victoria Herrero-Garcia | \$ 39.04 | \$114.27 | |
| Ambient Energy, Inc. | SC II | Adam Meltzer | \$ 39.71 | \$116.23 | |

**Office Billing Rate = Direct Hourly Rate x Office Multiplier listed in Table 2*

***Field Billing Rate = Direct Hourly Rate x Field Multiplier listed in Table 2*

Table 2: Schedule of Overhead Rates for Consultants and all Subconsultants

| Company | Office | Field | MULTIPLIERS | |
|--------------------------|---------|---------|-------------|--------|
| | | | OFFICE | FIELD |
| Jacobs Engineering Group | 99.41% | 86.43% | 1.9941 | 1.8643 |
| VAI | 124.83% | | 2.2483 | |
| Wilson Ihrig | 214.81% | | 3.1481 | |
| Triunity | 108.46% | | 2.0846 | |
| RVB+A | 138.64% | | 2.3864 | |
| RQS | 110.00% | | 2.1000 | |
| Luster | 160.88% | 121.23% | 2.6088 | 2.2123 |
| Ikos* | 110.00% | | 2.1000 | |
| RSE | 121.98% | | 2.2198 | |
| Ambient Energy, Inc. | 192.70% | | 2.9270 | |

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 Agreement.

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. 2 C.F.R §§ 200.318(i) and 200.333.

IV. DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters, which is incorporated into this Agreement.

V. LOBBYING CERTIFICATION

See Certification Regarding Lobbying, which is incorporated into this Agreement.

VI. PROMPT PAYMENT

See SBE/DBE Requirements, attached to this Agreement.

VII. 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.

VIII. CIVIL RIGHTS

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

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

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

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

reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

IX. 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 Agreement:

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.

X. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XII. 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.

XIII. 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.

XIV. 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.

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

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

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

XVI. 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.

XVII. DRUG AND ALCOHOL TESTING (*applicable to performance of safety-sensitive functions*)

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.

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XX. 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.

XXI. 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.

XXII. 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 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.

XXIII. 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.

XXIV. 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.

XXV. 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.

XXVI. 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.

XXVII. 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 subcontractors:

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

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. 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. 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.

A. 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.

B. 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.

III. SBE/DBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE and DBE Participation Goals

Goals of 21 percent SBE and 4 percent Woman-owned DBE have been established for this contract. These goals will apply to the following types of contracts or scope of work in the contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection,

Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

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:

a. 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.

b. 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.

c. 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.

d. 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.

e. 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
(415) 701-4362
Attn: Sheila Evans-Peguese

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 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.

ENCLOSURE 3

Contract Nos. SFMTA-2020-49

As-Needed Specialized Vehicle Engineering and Other Related Consulting Services Agreement

**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

STV Incorporated

For

**AS-NEEDED SPECIALIZED VEHICLE ENGINEERING AND
OTHER RELATED CONSULTING SERVICES**

Contract No. SFMTA-2020-49

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

**Agreement between the City and County of San Francisco and
STV Incorporated
Contract No. SFMTA-2020-49**

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

Recitals

F. The SFMTA wishes to obtain qualified consultants to provide as-needed specialized vehicle engineering services to supplement the Transit Division staff in the support of the procurement, rehabilitation, maintenance and support of its transit vehicle fleet, transit related equipment, maintenance of way, various transit systems and facilities.

G. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21 through a Request for Proposals (RFP) issued on April 14, 2020, pursuant to which City selected Contractor as one of the highest-qualified scorers.

H. The Small Business Enterprise (SBE) subcontracting participation requirement for this Agreement is 21%, and the Woman-owned Business Enterprise (WBE) subcontracting participation requirement for this Agreement is 4%.

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

J. The City's Civil Service Commission approved Contract No. 44741-19/20 for this Agreement on September 16, 2019.

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

1.2 "CCO" means SFMTA Contract Compliance Office.

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

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

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

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

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

1.8 “**Contractor**” or “**Consultant**” means STV Incorporated, 505 14th Street, Suite 1060, Oakland, CA 94612.

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

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

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

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

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

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

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

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

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

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

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

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

1.21 “**Woman’s Business Enterprise**” or “**WBE**” means a disadvantaged business enterprise (DBE), as defined in 49 CFR Section 26.5, that is at least 51 percent owned by women, or, in the case of a corporation, in which 51 percent of the stock is owned by women. See also Appendix E.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the later of: (i) November 1, 2020; or (ii) the Effective Date, and expire on October 31, 2025, unless earlier terminated as otherwise provided herein.

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

Article 3 Financial Matters

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

new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.3 Compensation.

3.3.1 Amount. Compensation under this Agreement shall be based on either a negotiated lump sum price per task or subtask, or actual direct costs plus a negotiated fixed profit per subtask and task. In no event shall the amount of this Agreement exceed Five Million Dollars (\$5,000,000).

3.3.2 Method of Computing Compensation

a. Direct Labor Rates. The direct labor rates in Appendix B shall be fixed at that level until 12 months after the Effective Date. Direct Salary Rates in Appendix B may be adjusted 12 months after the Effective Date. No single rate may be increased by more than three percent without prior written approval of the SFMTA.

b. Overhead. The Consultant's compensation under this Agreement will be based on and shall not exceed the combined overhead and salary burden rates as shown on the Calculation of Charges attached as Appendix B. The rates in Appendix B may be adjusted annually with prior written approval from the Project Manager. The Consultant's and Subconsultants' combined overhead and salary burden rates are subject to audit in compliance with Federal requirements.

The overhead rates attached as Appendix B, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within 180 Days of the end of Consultant's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Consultant shall submit to the Project Manager Consultant's and all Subconsultants' actual rates during the term of this Agreement. For each rate paid to the Consultant that exceeds the Consultant's or any Subconsultant's actual rate, the Consultant shall reimburse to the City the total difference between the rate paid and Consultant's or Subconsultant's actual rate during the term of this Agreement. Consultant shall reimburse

City within 30 Days of written notice from City seeking reimbursement. For each actual overhead rate of Consultant or Subconsultant that exceeds the rate paid to Consultant, City shall pay to Consultant the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Consultant within 60 Days of City's receipt of all of Consultant's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Consultant's rates as provided above.

c. Reimbursable Costs. This Agreement is subject to federal regulations concerning the reimbursement and audit of expenses, costs and overhead as set forth in the "Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards," 2 CFR Part 200 et seq., and, for for-profit organizations, the cost principles in 48 CFR Part 31 (collectively, the Federal Cost Requirements). The Consultant acknowledges that it is familiar with the Federal Cost Requirements. Consultant shall not seek reimbursement and the City shall not pay reimbursement to Consultant for costs (including but not limited to direct costs, indirect costs, and overhead) that are not compensable under the Federal Cost Requirements. Consultant understands and acknowledges that the City shall not reimburse Consultant for Consultant's costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments to Consultant 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 Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses are to be pre-approved by the SFMTA, and Consultant must obtain the best air fare available in a timely fashion. All travel receipts must accompany the invoice.

e. Non-Reimbursable Expenses. Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for the services of this Agreement. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable.

f. Use of Public Transportation. San Francisco is a transit-first city, and the SFMTA encourages Consultant and Subconsultants to use public transit in performance of its services to the maximum extent possible. The SFMTA will closely review the Consultant's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Transportation network companies and hired

cars (other than taxis) 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 Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B (Calculation of Charges), attached hereto and incorporated by reference as though fully set forth herein. Compensation shall be made for Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. The City will make payment within 30 Days of receipt of the invoice, unless the City notifies the Contractor that a dispute or correction as to the invoice exists. The breakdown of labor and overhead rates associated with this Agreement appears in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

3.3.4 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. The City may reject Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement; in such a case, Contractor must replace the non-conforming work without delay and at no cost to the City.

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

3.3.6 Invoice Format. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. The Consultant shall submit invoices for all allowable charges incurred in the performance of each Task Order. No more than one invoice per task shall be submitted in a month. The Consultant shall submit invoices containing the following information:

- (j) Contract Number;
- (k) Task Order Number;
- (l) Description of the work performed or services rendered;
- (m) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced;
- (n) Other direct costs;
- (o) Subconsultant costs supported by invoice itemization in the same format as described here;

- (p) Fixed Fee for current invoice period and amount of Fixed Fee as of date of invoice. Fixed Fee will be calculated as a prorated portion of the total fixed fee for the task for which Consultant seeks payment;
- (q) Total costs;
- (r) SFMTA Form No. 6 – Progress Payment Report.

3.3.7 Required Form for Payment. The City is not authorized to pay invoices submitted by Consultant prior to Consultant’s submission of the completed SFMTA Progress Payment Report (Form No. 6). Consultant shall pay its Subconsultants within three Working Days after receiving payment from the SFMTA, except as otherwise authorized by the SBE/DBE Program (see Appendix E). If the Progress Payment Report is not submitted with Consultant’s invoice, the SFMTA may withhold 20 percent of the approved payment due pursuant to that invoice until the SFMTA Progress Payment Report is provided. Following the SFMTA’s payment of an invoice, Consultant must submit, within five Days, a verification of its payments to Subconsultants for the work they have performed via the SFMTA’s B2GNow System (<https://sfmta.diversitycompliance.com/>). Failure to provide such verification shall be cause for the SFMTA to suspend progress payments to Consultant.

3.3.8 Getting Paid for Goods and/or Services from the City.

a. All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City’s Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

b. The following information is required to sign up: (i) The enroller must be their company’s authorized financial representative, (ii) the company’s legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company’s U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company’s bank account information, including routing and account numbers.

3.3.9 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). 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 Term and the other provision(s), the Grant Term shall apply.

c. Flow-Down. 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 excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

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

3.6 Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

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

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

4.3 Presentations. In the performance of assigned tasks, the Consultant, 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 Task Requirements. The SFMTA will define task requirements. The cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below.

4.4.1 Scope of Work. The SFMTA will prepare the scope of work and expected time of completion using the Task Order Request Form (Appendix C) and transmit the Task Order Request Form to the Consultant with a request for a proposal for the performance of the task. The Task Order Request Form will be finalized upon successful negotiation of the task.

4.4.2 Consultant Proposal. The Consultant shall prepare and submit a proposal for the task showing:

- a.** A work plan that includes a detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;
- b.** Milestones for completion for each subtask and deliverables at each milestone;
- c.** Personnel and the Subconsultants assigned to each part of the work, along with résumés or curriculum vitae that indicates why each of the personnel are qualified to perform the work; and prior experience in performing work of this nature; if not included in the original proposal;
- d.** A detailed cost estimate for each task or subtask showing:
 - (i)** Estimated hours and direct salaries by position (hourly rates by position as listed in Appendix B for both Consultant and Subconsultant personnel). Labor hours for preparing monthly invoices or filling out required SBE forms will not be allowed. Consultant will manage Subconsultants so additional Subconsultant program management labor hours will not be allowed. Overtime labor hours will not be allowed without prior written

approval. If overtime is approved, it will be billed at the basic billing rates listed and not at one and one half times the billing rate;

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

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

(iv) Proposed profit as follows:

- Proposed profit of Consultant's work effort as a fixed fee amount not to exceed seven percent of Consultant's estimated direct salaries and overhead costs; and
- For work performed by all Subconsultants, proposed total mark-up for Consultant on Subconsultant's work effort as a fixed fee not to exceed three percent of Subconsultant's total labor charges.

4.4.3 Negotiation of Cost and Profit. The Project Manager will review the proposal and negotiate either a lump sum price or a fixed profit to perform the work of each subtask and task and either a total price or a total not to exceed cost for the task.

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

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

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

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

4.4.8 Changes. Agreed lump sum prices and fixed profits for subtasks and tasks cannot be modified unless there is a material change in the scope of work of the task. If there is a material change in the scope of work of a task, then a proposal, negotiations, and

Record of Negotiations shall be required before changes to agreed lump sum prices and fixed profits can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

4.4.9 Failure to Agree on Terms of Task. In the event that the SFMTA and Consultant 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 Consultant 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 Consultant refuse to undertake a City-ordered task.

4.5 Key Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Consultant's authorized Subcontractors) to perform the Services. Contractor shall comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement. Contractor agrees that the following key team members (Key Personnel) shall be committed and assigned to provide services under this Agreement to the level required by the SFMTA for the term of the Agreement and shall be staffed at the local Consultant offices within the San Francisco Bay Area for all such time, except as provided below or as otherwise approved by the SFMTA in writing:

Local Key Personnel

- Elson Hao – Project Manager
- Christina Grossenbacher – Deputy Project Manager

Non-Local Key Personnel

- Louis Lim – Systems Integration
- Paul Kaufman – Hybrids and ZEB
- Ja-Mie Luey – Maintenance of Way
- Mark Peterson – Facilities Design
- Matt Bertrand – Communications, Control and SW
- Athena Ullah – Planning and Asset Management

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

4.6 Current Workload and Available Resources. The Consultant covenants that its current workload and the workload of its Subconsultants will not affect the commencement and the progress of the work under this Agreement. The Consultant 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 Consultant shall make good faith efforts to have all contracts signed with Subcontractors within three weeks of NTP. Consultant shall provide copies of said subcontracts to the SFMTA upon request.

4.7 Transmittal of Work Product. When requested by Agency’s Project Manager, and after completion of each task and subtask, the Consultant shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its Subconsultants’ work on this Agreement. The Consultant’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.

4.8 Reserved (Reproduction of Work Product).

4.9 Agency’s Responsibilities Regarding Submittals. The Agency will review and comment on Consultant’s submittals generally within two calendar weeks of submittal. The Agency and Consultant 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 Consultant submittals shall in no way relieve the Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Consultant of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

If Consultant 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 Consultant 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 4.5.2 above.

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

- Capitol Government Contract Specialists (Capitol GCS)
- Global Innovations, U.S.A. (Global)
- Jade Associates (Jade)
- Telamon Engineering Consultants, Inc. (TECI)
- Turner Engineering Corporation (Tenco)
- Virginkar & Associates, Inc. (VAI)

- Wilson Ihrig & Associates (Wilson Ihrig)

4.11 Independent Contractor; Payment of Employment Taxes and Other Expenses

4.11.1 Independent Contractor. For the purposes of this Article 4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.11.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this

liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.12 Assignment. The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

Article 5 Insurance and Indemnity

5.1 Insurance.

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

- a.** Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- b.** Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- c.** Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.
- d.** Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss. The policy shall at a minimum cover professional

misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

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

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

e. Reserved. (Cyber and Privacy Coverage).

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

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

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

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

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

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

5.1.6 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives

satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

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

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

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

5.2 Indemnification for Design Professionals. To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

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

5.2.2 Intellectual Property Infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of 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.

5.2.3 Severability Clause Specific to Indemnification and/or Defense

Obligations. To the extent any Court of competent jurisdiction invalidates any word, clause, phrase, or sentence herein that word, clause, phrase, or sentence, and no other portion, shall be deemed removed from this section. All other words, clauses, phrases and/or sentences remain enforceable to the fullest extent permitted by law.

Article 6 Liability of the Parties

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

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

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

Article 7 Payment of Taxes

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

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

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

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

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

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

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. The City will pay Contractor any monies withheld under this paragraph, without interest, when Contractor comes 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. The notice shall specify the date on which termination shall become effective.

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

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

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

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

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

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

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

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

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

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

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

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

8.1.4 In no event shall the City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by the SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination

employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Services covered by Contractor's final invoice; (ii) any claim which the SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and the SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

8.2 Termination for Default; Remedies.

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

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

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

b. Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from the SFMTA to Contractor.

c. Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a

custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

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

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

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

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

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

8.4 Rights and Duties upon Termination or Expiration.

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

| | |
|------------|--|
| 3.3.4 | Payment Limited to Satisfactory Services |
| 3.3.9 | Grant-Funded Contracts |
| 3.4 | Audit and Inspection of Records |
| 3.5 | Submitting False Claims |
| Article 5 | Insurance and Indemnity |
| 6.1 | Liability of City |
| 6.3 | Liability for Incidental and Consequential Damages |
| Article 7 | Payment of Taxes |
| 8.1.6 | Payment Obligation |
| 9.1 | Ownership of Results |
| 9.2 | Works for Hire |
| 11.6 | Dispute Resolution Procedure |
| 11.7 | Agreement Made in California; Venue |
| 11.8 | Construction |
| 11.9 | Entire Agreement |
| 11.10 | Compliance with Laws |
| 11.11 | Severability |
| Article 13 | Data and Security |

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

Article 9 Rights In Deliverables

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

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

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

Article 10 Additional Requirements Incorporated by Reference

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

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

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

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

10.5 Nondiscrimination Requirements

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Small Business Enterprise Program.

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

10.6.2 Compliance with SBE Program. Consultant 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 and completing all required SBE/DBE forms. Failure of Consultant 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, Consultant is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure non-discrimination in Consultant's employment practices.

10.7 Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this Contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information

about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor shall comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this Contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.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 Chapter 12Q, 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 Chapter 12Q. 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 agrees to comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

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

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) 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, (c) a candidate for that City elective office, or (b) 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 Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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

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

10.17 Reserved. (Distribution of Beverages and Water)

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

10.19 Reserved. (Preservative-Treated Wood Products).

Article 11 General Provisions

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

To City: Janet Gallegos
Program Delivery and Support Manager
Muni Metro East Facility, 601 25th St,
San Francisco, CA 94107
janet.gallegos@sfmta.com

To Contractor: Elson Hao
STV Incorporated
505 14th Street, Suite 1060
Oakland, CA 94612
elson.hao@stvinc.com

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

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

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

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

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

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

11.6 Dispute Resolution Procedure.

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

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

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

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

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

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

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated May 28, 2020. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, implementing task orders shall control over the RFP, and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

Article 12 SFMTA Specific Terms

12.1 Large Vehicle Driver Safety Training Requirements.

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

12.1.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

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

13.1.2 Confidential Information .In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a

reasonably prudent contractor would use to protect its own proprietary or confidential information.

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

13.3 Reserved. (Business Associate Agreement)

13.4 Management of City Data and Confidential Information.

13.4.1 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.

13.4.2 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.4.3 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information, including all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall, within 10 business days, purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, 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 business days of the purge.

Article 14 MacBride Principles And Signature

14.1 MacBride Principles -Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this

Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

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| <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, MTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p> | <p>CONTRACTOR</p> <p>STV Incorporated</p> <hr/> <p>Richard Amodei Executive Vice President</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: 0000006319</p> |
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Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form
- D: Federal Transit Administration (FTA) Requirements
- E: SBE/DBE Program

Appendix A

Scope of Services

1. Description of Services

The Consultant shall provide as-needed specialized consulting services for various projects, including the implementation and completion of various transit vehicle and transit-related equipment procurements, maintenance-of-way projects, operational scenario model projects, asset management projects, service planning projects, various transit system projects, and rehabilitation and replacement projects. Services may include design analysis, structural finite element analysis, engineering calculations, quality control inspection, feasibility studies, administrative support, vehicle acceptance and testing, warranty administration, and cost analyses. The Consultant may be asked to perform other tasks related to the maintenance and operation of the transit vehicles and facilities, including assisting with fare collection, the advanced train control system (ATCS), data communications, the passenger information system, vehicle telematics systems, charging infrastructure software systems, and associated equipment.

The SFMTA will decide, in its sole discretion, which tasks to assign to the Consultant. The SFMTA may use qualified City staff to the extent possible to provide the technical engineering and quality control services. The services to be provided by the Consultant at the direction and to the satisfaction of the SFMTA may include the following:

A. Task 1: Project Management

The Consultant shall support the SFMTA in the day-to-day execution of projects related to its transit vehicles, systems and services. Deliverables may include the following:

1. Project Management Plan (PMP)

Develop, implement, and maintain the PMP for transit-related projects, including all related and supporting management documents.

2. Progress Reports

Provide a series of reports that will summarize the progress of activities. The reports should also track any issues that may have occurred during the past reporting period, their status and resolution. Reports may include, but not be limited to: bi-weekly reports, monthly reports, quality assurance reports, trip reports, Federal Transit Administration (FTA) Quarterly Reports, and other reports required by funding agencies.

3. Meetings

Schedule, attend, and document meetings, conference calls, and other review sessions.

4. Documentation

Prepare documentation (letters, reports, presentations).

5. Tracking Systems

Set up and maintain systems to track all project information to allow a project to be effectively managed. Items to be tracked include correspondence, actions, and change orders.

6. Stakeholder Outreach

Prepare presentations, reports, and responses to requests from stakeholders, such as the FTA.

B. Task 2: Contract Management

The Consultant shall support the SFMTA Project Manager in managing the projects related to its transit vehicles, systems and services, including performing tasks such as:

1. Contract Management

Support oversight and enforcement of bus and rail vehicle procurement and rehabilitation contracts, including verification of requirements, change orders, deliverables, claims, and payments.

2. Schedule Management

Support development and maintenance of the overall project schedules for a variety of fleet-related projects, including oversight of the bus and rail vehicle procurement and rehabilitation schedule, and other transit-related technology projects, such as advanced train control systems. In addition, support integration of the fleet-related project schedules into other projects, such as the Central Subway, Passenger Information System, Clipper 2.0, and Better Market Street projects.

3. FTA Compliance

Conduct reviews, as needed, to verify that the bus and rail vehicles and equipment conform to their respective contract requirements and technical specifications, as well as all federal, state and local requirements. Activities and deliverables may include:

- a. Pre-award and post-delivery Buy America audits, in compliance with 49 CFR Part 663.

- b. Other audits and reviews, as required, to verify that the bus and rail vehicle procurement and rehabilitation contracts are being performed in accordance with all applicable federal, state and local requirements.

4. Cost Estimates

Prepare independent cost estimates and cost analyses for any proposed contracts or contract changes (in accordance with FTA requirements, as applicable); identify responsibilities for the changes, and advise on any resulting impacts in scope, schedule and budget.

C. Task 3: Design Reviews and Evaluation of CDRLs and Submittals

Consultant shall support the SFMTA in the review, outreach and response to submittals from rolling stock and other contractors, including letters, drawings, design review packages and other Contract Deliverable Requirements List (CDRL) items.

1. Specialized Experts

Provide specialized experts, as-needed, to cover all vehicle systems, as well as risk assessments, hazard analyses, reliability analyses and systems integration, among others.

2. Submittal Review and Response

Review and comment on CDRL Items. Review the submittals for compliance with the specifications and meet the project objectives for quality, reliability and maintainability; recommend disposition to the SFMTA. Work with the project team to drive consensus among internal stakeholders to develop an agreed SFMTA position on issues as they arise.

3. System Integration

Support the SFMTA during planned systems integration reviews to ensure that the vehicle and subsystems perform according to the SFMTA's requirements and expectations, including addressing interface issues with concurrent projects, such as Central Subway, Passenger Information System, Clipper 2.0, and Better Market Street.

4. First Article Inspection

Coordinate, attend and oversee First Article Inspections (FAI) for the entire vehicle, including subsystems, establishing a baseline upon which the production units will be based, and changes in configuration will be assessed.

5. Issue Resolution

Conduct research into peer agencies, best practices, required standards, and federal, state and local requirements to provide advice and counsel with regards to issues that may arise. Reports or presentations shall be provided as requested by the SFMTA.

D. Task 4: Quality Assurance (QA) Oversight

The Consultant shall provide QA oversight services to ensure that quality material is used, good workmanship is performed, and work is conducted in accordance with all plans and contract documents, as well as federal, state and local requirements. Activities and deliverables may include:

1. QA Program Oversight

Review the applicable QA programs to assure that the contractor's QA organization follows contractually required processes for controlling the quality of the design, tooling calibration, receiving inspection, corrective actions, and the manufacturing process.

2. QA Production Oversight

Conduct checks, as necessary, to assure that quality records are maintained throughout the manufacturing process at both supplier and subcontractor facilities. Assess quality trends and review with SFMTA staff and the contractor to determine any corrective actions.

3. Quality Assurance Representative

Provide a Quality Assurance Representative (QAR) to provide daily (or weekly) written inspection reports as required by the SFMTA. The QAR will use SFMTA-approved procedures to note any deficiencies and corrective actions required.

4. QA Change Management Oversight

Review the contractor's change control, configuration management, and document management systems to verify that they are capable of complying with the contract provisions and are able to monitor changes from the baseline specification.

5. Receiving Inspection

Provide incoming or receiving inspection at the SFMTA delivery location to determine whether vehicles or equipment have been damaged in transport or at any other time.

E. Task 5: Test Program Oversight

The Consultant shall provide “test program oversight” services to ensure that the prototype bus and rail vehicles, production vehicles, and rehabilitated bus and rail vehicles perform according to the vehicle contract requirements and technical specifications, including all federal, state and local requirements. Activities and deliverables may include:

1. Test Documentation Review

Review and recommend for acceptance the test and evaluation plans and procedures for all materials, components, subsystems, and completed work requiring testing under the specifications.

2. Test Witnessing

Witness design, qualification, acceptance and burn-in tests, as required, including tests at contractor’s or its subcontractors’ facilities, the SFMTA site, or third party location.

3. Vehicle Acceptance

Support the SFMTA in acceptance inspection and testing efforts. Once a vehicle or equipment has been delivered to the SFMTA but before it is accepted, Consultant shall perform a final audit to verify that the necessary documentation (e.g., weight certificates, Car History Book) is provided with the vehicles.

4. Operational Testing

Support operational testing to confirm compatibility with the SFMTA’s existing system, facilities, and equipment; assist with operator orientation.

F. Task 6: Commissioning and Start-up Activities

The Consultant shall support commissioning and start-up activities prior to the start of revenue service for the new vehicle or equipment. Activities and deliverables may include:

- 1.** Review and comment on all support services submittals, including maintenance manuals, parts and operations manuals, training programs, and safety program plans.
- 2.** Verify delivery and configuration of as-built drawings and associated documentation.
- 3.** Support the training program, including testing and acceptance of the training simulator.
- 4.** Support safety certification of the advanced train control systems, the new rail fleet, and other rail systems in accordance with CPUC General Order 164-D; develop

checklists, conduct necessary verifications, obtain sign-off of responsible parties, and prepare mitigation plans, if necessary.

5. Support revenue readiness activities, including maintenance shop readiness, and verification that the vehicle design will meet its operational requirements for SFMTA routes, including range, gradeability and environmental issues.
6. Support coordination activities with interrelated projects, such as the Central Subway Project, ATCS upgrades, Passenger Information System, Clipper 2.0 and Better Market Street.

G. Task 7: Post-Delivery Support

Consultant shall assist the SFMTA in effectively developing and administering a technical support program as required. This program will cover all post-delivery support requirements, including warranty administration, manual updates and field modification management.

Activities and deliverables may include:

1. Ensuring that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided in accordance with the requirements of the applicable procurement contract.
2. Support the oversight and tracking of all field modification work, including review of documentation, verification of configuration management, QA oversight of re-work, re-testing, and spare parts reconfiguration.
3. Monitor the reliability program and work with the SFMTA and the contractor to assure compliance of the fleet with reliability requirements.
4. Assist in the set-up, execution, administration, and monitoring of the warranty program, including identification and resolution of fleet defects.
5. Ensure that the preventive maintenance process and operations and maintenance activities are clearly defined and complete.

H. Task 8: Operations and Maintenance Support

Consultant shall provide other services as-needed by the SFMTA's Transit Division to support the maintenance and operation of the transit vehicles. Activities may include:

1. Review plans, checklists and procedures related to vehicle preventive maintenance.
2. Perform preventive maintenance and inspection audits and reporting.
3. Evaluate and assist with the implementation of modern and cost-effective maintenance methods for vehicles.
4. Provide data analysis to identify spikes and shortfalls in vehicle performance.
5. Review and update operating procedures as necessary.
6. Assist in the development or updating of operating practices and procedures.

7. Perform technical evaluations and assist with the implementation of emerging technologies to improve operations and service delivery.
8. Perform strategic long-term planning of key operations issues.
9. Provide Transit Operations support, including scheduling analyses and service improvement analyses.

I. Task 9: Maintenance of Way

The Consultant shall provide a broad range of specialized services and staff to complete Task Orders issued by the SFMTA, either by direct assignment of its own personnel or through Subconsultants, including, but not limited to, initial planning and programming, specialized analytical studies, and start-up and operations planning. Task Orders may include:

1. Provide support to SFMTA's Maintenance-of-Way Engineering Unit, which includes planning, design review, and field investigation support of transit system improvements, including the traction power system, transit signaling system, and communication system to improve safety and service reliability. **The proposed support work is not intended to conflict with the services to be provided in the RFP for the As-Needed Engineering Services contracts to be issued by the SFMTA's Capital Projects and Construction Division.** The scope of work may also include:
 - a. Prepare design criteria to include and meet all applicable codes and standards.
 - b. Prepare alternate analyses and recommend overall design approaches.
 - c. Perform site investigations and functional analyses.
 - d. Review design packages (plans and specifications)
 - e. Provide technical administrative support (e.g., file drawings, meeting minutes, document control).
 - f. Incorporate SFMTA's QA program requirements into the design and construction packages.
 - g. Identify and develop special testing requirements, system cut-over plans, and start-up plans.
2. Assist in the preparation of procurement contracts for transit infrastructure components and systems; operating equipment; and long-lead items. The task shall include product research, specifying products, and performing alternative analyses.
3. Perform field surveys using licensed surveyors.
4. Prepare project management plans in accordance with FTA requirements.
5. Prepare QA oversight, audits, plans, training and assistance in accordance with FTA requirements.

6. Predict, analyze, prevent, and mitigate noise and vibration from transit operations and equipment, and design and monitor mitigation measures.
7. Perform testing as required by the City, including metallurgical, annual ultrasonic rail testing, and other testing requested by the SFMTA.
8. Perform preliminary and system hazard analyses, failure modes and effects analyses, single-point-of-failure analyses, hazard level classification, and safety certification of systems.
9. Perform systems analyses, including communications systems analyses, systems integration, safety processes, configuration management, and related work.
10. Perform start-up and commissioning of systems, including integration and pre-revenue “dry-run” testing, developing test procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses.
11. Provide oversight and required documentation to obtain certification of the SFMTA’s System Safety and Security Program per CPUC General Order (GO) 164-D. (General Order 164-D requires transit agencies who are building and operating rail fixed guideway systems to establish a System Safety and Security Program.) The scope of work may include:
 - a. Provide safety standards
 - b. Review the system safety program
 - c. Review the contractor’s hazard analyses
 - d. Develop Safety and Security Certification Plans
 - e. Lead Safety & Security Certification Review Committee SSCRC (ongoing)
 - f. Maintain the Audit Conformance Checklist (ongoing)
 - g. Review the safety requirements
 - h. Audit implementation of safety requirements
 - i. Audit resolution of hazards (ongoing)

J. Task 10: Transit Systems

The Consultant shall provide as-needed services supporting the operations and maintenance of existing transit information technology systems (e.g., ATCS, fare collection, communication), including tasks supporting the integration of different systems with each other. Tasks may include:

1. Concept of Operations / Lifecycle Planning

The Consultant shall advise the SFMTA on key issues relating to the most effective means to employ technology systems to assist in operations. This may include developing a procurement and lifecycle strategy.

2. Procurement Support

The Consultant shall conduct industry outreach and advise the SFMTA on the available firms and products for individual procurement efforts. This shall include supporting the request for information (RFI), request for qualifications (RFQ), and request for proposals (RFP) processes, in such ways as:

- a. Maintaining industry contacts and communicating with potential vendors on the SFMTA's behalf.
- b. Facilitating, organizing and staffing RFI or RFP pre-submission meetings.
- c. Facilitating and organizing vendor presentations.
- d. Advising the SFMTA on the nature of each vendor's offering.
- e. Drafting language for inclusion in the RFI, RFQ, RFP and sample contract documents.

3. Design Support

In the design phase of a technology procurement project, the Consultant shall review the system vendor's design documents and advise the SFMTA and the vendor on potential integration issues, discontinuity between the system design and the concept of operations, or potential design deficiencies. The Consultant shall suggest design solutions for these issues in the design phase so they may correct designs at a minimum of delay and expense to the project.

4. Quality Control

During the production/delivery phase of a technology procurement project, the Consultant shall support the SFMTA's quality control efforts to ensure the equipment being delivered is free from manufacturing or design defects.

5. Hardware Integration

During the design and engineering phases, the Consultant shall support the integration of the new system with the other systems present on the SFMTA's vehicles or in the SFMTA's facilities. The Consultant shall be ultimately responsible to the SFMTA for ensuring that the new system is fully integrated with existing systems to the specifications detailed in the Task Order.

During the production/delivery phase, the Consultant shall support the integration of the new system to the vendor's specifications and any additional specifications that other SFMTA consultants have developed. This support may include activities such as:

- a. Developing an installation/deployment plan compatible with daily SFMTA operations and maintenance.
- b. Overseeing the execution of the installation plan in coordination with the SFMTA Project Manager and operations managers

- c. Training any SFMTA staff as needed to support the installation

6. Innovative Solutions

Throughout the system lifecycle, the Consultant shall support SFMTA operations by designing innovative solutions that require integration between one or more existing systems on board vehicles, on the wayside, in the street environment, or in the control center. This support would not necessarily be connected to a new system procurement; rather, the SFMTA would be seeking advice on how to accomplish the SFMTA's stated goals with existing equipment. The Consultant shall suggest modifications to that equipment, or additional purchases to support the SFMTA's goals.

7. List of Systems

Potential systems requiring the support of as-needed services include:

- a. Farebox Collection System
- b. Train Control Systems
- c. Surface Rail Signaling Systems
- d. Traffic Signals and Transit Signal Priority (TSP) systems
- e. Customer Information System
- f. On-Board Vehicle Signs and Announcement Systems
- g. Platform Signs and Announcement Systems
- h. Vehicle Telematics
- i. Charging Infrastructure Software Solution
- j. Automatic Passenger Counter system
- k. Video Surveillance systems
- l. Transit-Only Lane Enforcement (TOLE) System
- m. Collision Avoidance System
- n. DriveCam and SmartDrive systems (used for safety incident detection)
- o. Autonomous Vehicle Technology

K. Task 11: Other Services

Consultant shall provide other services as-needed by Transit Division for the implementation and completion of the Project. Tasks may include:

1. Advise the SFMTA on key issues regarding vehicle and equipment procurement, including compliance, systems integration and deviation from Contract requirements.
2. Support project integration into existing systems and emerging programs; these may include maintenance management systems, project management systems, asset management tracking, or other agency-wide systems.
3. Develop integration plans to ensure that the new vehicles or equipment operates as intended with the existing infrastructure, including track and overhead, substations, wheel rail interface, charging infrastructure and maintenance facilities.

4. Support tasks for long-term fleet planning and replacement, including options, timing and procurement strategies required to maintain the fleet.
5. Support with data collection efforts, such as ridership counts, traffic counts, and pedestrian counts.
6. Support the Agency's Communications & Marketing Division with graphics for maps, posters, reports, one-pagers, marketing material, and other documents.
7. Support data analyses pertaining to service planning activities, including before/after comparisons and trend analysis.
8. Support the Agency's Communications & Marketing Division with outreach efforts, including facilitating meetings and providing logistical help and ambassador resources.
9. Produce or assist with peer reviews and best practice reviews for activities such as off-wire operation, fallback scheduling, and emergency planning.
10. Assist with asset management of transit equipment.
11. Prepare fleet retirement plan to determine the best methodology, cost and schedule to retire vehicles as they are replaced and taken out of service.
12. Conduct data analyses to identify spikes and shortfalls in vehicle performance.
13. Produce or assist with the production of operational scenario models. Models may take into account available ridership, grade, or route data.

Appendix B
Calculation of Charges

Table 1: Direct Salary Hourly Rates by Positions for Consultant and all Subconsultants

| Direct Salary Rates | | | | Office or Field Billing Rate? Include only one. | |
|---------------------|---------------------------------|----------------------------------|--------------------|--|----------------------|
| Firm | Position | Name | Direct Hourly Rate | Office Billing Rate* | Field Billing Rate** |
| STV Incorporated | Principal-in-Charge | Christopher Holliday | \$160.68 | \$373.37 | |
| STV Incorporated | Project Manager | Elson Hao | \$ 98.24 | \$228.28 | |
| STV Incorporated | Deputy Project Manager | Christina Grossenbacher | \$ 81.80 | \$190.08 | |
| STV Incorporated | Quality Manager | Richard Eitland | \$105.77 | \$245.78 | |
| STV Incorporated | Testing and Commissioning Lead | Serge Bouchard | \$ 76.93 | \$178.76 | |
| STV Incorporated | Maintenance of Way Lead | Ja-Mie Luey | \$115.86 | \$269.22 | |
| STV Incorporated | Engineering Lead | James Martin | \$107.52 | \$249.84 | |
| STV Incorporated | Operations and Maintenance Lead | Brenda Christner | \$ 70.73 | \$164.36 | |
| STV Incorporated | Quality Assurance Lead | Gautam Khaitan | \$ 74.46 | \$173.02 | |
| STV Incorporated | Systems Integration Lead | Louis Lim | \$ 57.70 | \$134.08 | |
| STV Incorporated | Signals Specialist | Erik Aburto | \$ 87.51 | \$203.35 | |
| STV Incorporated | Vehicle Specialist | Greg Barstow | \$ 92.19 | \$214.22 | |
| STV Incorporated | Vehicle Specialist | John Batey | \$ 91.06 | \$211.60 | |
| STV Incorporated | Vehicle Specialist | Matthew Bertrand | \$ 82.13 | \$190.85 | |
| STV Incorporated | Service Planning | Tyler Bonstead | \$104.15 | \$242.01 | |
| STV Incorporated | Bus Vehicle Specialist | Michael Broe | \$ 81.55 | \$189.50 | |
| STV Incorporated | Facilities Engineer | Brian Bui | \$ 72.36 | \$168.14 | |
| STV Incorporated | Vehicle Specialist | Dennis Cabigting | \$ 69.87 | \$162.36 | |
| STV Incorporated | Overhead Catenary Specialist | James Candlish | \$ 81.00 | \$188.22 | |
| STV Incorporated | Inspector | Steve Capone | \$ 60.77 | | \$130.52 |
| STV Incorporated | Vehicle Specialist | David Casper | \$ 83.24 | \$193.42 | |
| STV Incorporated | Vehicle Testing Specialist | Kevin Choi | \$ 49.05 | \$113.98 | |
| STV Incorporated | Operations Specialist | Preston Cook | \$ 76.50 | \$177.76 | |
| STV Incorporated | Wayside Communication | Ronald Creswell | \$107.64 | \$250.12 | |
| STV Incorporated | Vehicle Engineer | Jamie Dewberry | \$ 67.88 | \$157.73 | |
| STV Incorporated | Vehicle Specialist | Chiekh Diop | \$ 51.17 | \$118.90 | |
| STV Incorporated | Vehicle Engineer | Leslie Durrant | \$ 98.09 | \$227.93 | |
| STV Incorporated | Project Controls Specialist | Sara Eleuteri | \$ 41.28 | \$ 95.92 | |
| STV Incorporated | Vehicle Specialist | Gareth Evans | \$101.06 | \$234.83 | |
| STV Incorporated | Inspector/CWI | Kevin Flaitz | \$ 56.14 | | \$120.57 |
| STV Incorporated | FTA Compliance Lead | Norman Forde - recently resigned | \$114.76 | \$266.67 | |
| STV Incorporated | QA/QC | Andrew Frohn | \$108.95 | \$253.17 | |
| STV Incorporated | Metallurgist | Anthony Giammarise | \$ 92.79 | \$215.62 | |
| STV Incorporated | Planner | Dakota Gross | \$ 31.67 | \$ 73.59 | |
| STV Incorporated | Wayside Communication | Renat Guibadouilline | \$107.64 | \$250.12 | |
| STV Incorporated | QA/QC Specialist | Greg Haycox | \$ 85.58 | \$198.86 | |

| | | | | | |
|--------------------|----------------------------------|---|----------|----------|----------|
| STV Incorporated | Structural Engineer | Jason Hesse | \$ 67.58 | \$157.04 | |
| STV Incorporated | Operations Specialist | Ronald Hopkins | \$104.81 | \$243.55 | |
| STV Incorporated | Traction Power Specialist | Jerrold Jakubowski | \$ 77.76 | \$180.69 | |
| STV Incorporated | Vehicle Engineer | Thomas Janssen | \$104.07 | \$241.83 | |
| STV Incorporated | Facilities Specialist | Jonathan Johnson | \$73.24 | \$170.19 | |
| STV Incorporated | Bus Technology Specialist | Paul Kaufmann | \$106.81 | \$248.19 | |
| STV Incorporated | Vehicle Specialist | Haissam Khalife | \$ 87.88 | \$204.21 | |
| STV Incorporated | Facilities Specialist | Fred King | \$ 70.02 | \$162.71 | |
| STV Incorporated | Vehicle Maintenance Engineer | Scott Krieger | \$106.13 | \$246.61 | |
| STV Incorporated | Safety Specialist | Thomas Lentz | \$106.08 | \$246.50 | |
| STV Incorporated | RAMS Specialist | Thomas Ley | \$ 45.09 | \$104.78 | |
| STV Incorporated | Vehicle Engineer | John Lim | \$ 46.35 | \$107.70 | |
| STV Incorporated | Wayside Communication | Zheng Liu | \$ 81.78 | \$190.03 | |
| STV Incorporated | Asset Management | Rex Lloyd | \$ 81.51 | \$189.40 | |
| STV Incorporated | Vehicle Maintenance Specialist | Adrian Lowman-Diamond | \$ 39.46 | \$ 91.69 | |
| STV Incorporated | Track Specialist | Sergio Magallon | \$ 73.71 | \$171.28 | |
| STV Incorporated | Project Control Specialist | David Marcus | \$ 61.26 | \$142.35 | |
| STV Incorporated | Environmental Specialist | Ali Mir | \$111.15 | \$258.28 | |
| STV Incorporated | Inspector | Richard Navarro | \$ 66.01 | | \$141.77 |
| STV Incorporated | Safety Specialist | Vivian Papen | \$ 67.34 | \$156.48 | |
| STV Incorporated | Vehicle Specialist | Elizabeth Pedro | \$ 79.44 | \$184.59 | |
| STV Incorporated | Facilities Specialist | Mark Peterson | \$105.37 | \$244.85 | |
| STV Incorporated | Vehicle Specialist | Ian Pirie | \$100.67 | \$233.93 | |
| STV Incorporated | Systems Engineer | John Ponzio | \$159.09 | \$369.68 | |
| STV Incorporated | Vehicle to Wayside Integration | Rosetta Ramirez | \$ 98.56 | \$229.02 | |
| STV Incorporated | Service Planning | David Schumacher | \$ 36.60 | \$ 85.05 | |
| STV Incorporated | Inspector | Evan Scott | \$ 60.00 | | \$128.86 |
| STV Incorporated | Vehicle Test Engineer | Ajay Shirolkar | \$ 38.47 | \$ 89.39 | |
| STV Incorporated | Signals Specialist | Ryan Slater | \$ 89.71 | \$208.46 | |
| STV Incorporated | Track Specialist | Eric Sloane | \$ 91.15 | \$211.81 | |
| STV Incorporated | Track Engineer | Andrew Sokol | \$129.08 | \$299.94 | |
| STV Incorporated | Traction Power Engineer | Brandon Swartley | \$132.13 | \$307.03 | |
| STV Incorporated | Overhead Catenary Engineer | Brett Tharp | \$ 76.76 | \$178.37 | |
| STV Incorporated | RAMS Specialist | Charles Turner | \$ 75.23 | \$174.81 | |
| STV Incorporated | Asset/Maintenance Planner | Athena Ullah | \$ 64.73 | \$150.41 | |
| STV Incorporated | Vehicle Specialist | Serena Yombe | \$ 30.29 | \$ 70.38 | |
| STV Incorporated | Structural Engineer | Hailing Yu | \$ 82.47 | \$191.64 | |
| Capitol GCS | Scheduling Lead | John Guererro | \$ 65.00 | \$137.15 | |
| Global Innovations | FTA Compliance Specialist | Janette Hunter - Will take over as key staff for FTA Compliance | \$131.00 | \$184.71 | |
| Jade Associates | Contract Management/Outreach | Ellen Yu | \$ 80.00 | \$145.60 | |
| Jade Associates | Vehicle Maintenance Specialist | John Sadorra | \$150.00 | \$273.00 | |
| TECI | Survey Specialist | Mennor Chan | \$ 91.35 | \$258.79 | |
| TECI | Civil Engineer | Doug Zuuring | \$60.00 | \$169.97 | |
| Turner Engineering | Communication Systems Specialist | Brad Banks (Independent Consultant) | \$193.20 | \$286.50 | |

| | | | | | |
|--------------------|--------------------------------|-----------------------------------|----------|----------|----------|
| Turner Engineering | RAMS Specialist | Brian Ng (Independent Consultant) | \$125.00 | \$185.36 | |
| Turner Engineering | Inspector | Erick Garcia (W2 Employee) | \$ 55.00 | \$114.98 | |
| Turner Engineering | RAMS Specialist | Gary Thompson (W2 Employee) | \$ 65.00 | \$135.88 | |
| VAI | Inspector | Clark Kidwell | \$ 53.30 | | \$119.83 |
| VAI | Vehicle Maintenance Specialist | Frank Guzzo | \$ 73.00 | \$164.13 | |
| VAI | Inspector | Gary Guevin | \$ 53.30 | | \$119.83 |
| VAI | Vehicle Specialist | Scott Rodda | \$ 88.00 | \$197.85 | |
| Wilson Ihrig | Noise/Vibration Specialist | Derek Watry | \$ 78.04 | \$245.68 | |
| Wilson Ihrig | Noise/Vibration Specialist | Gary Glickman | \$ 74.68 | \$235.10 | |

**Office Billing Rate = Direct Hourly Rate x Office Multiplier listed in Table 2*

***Field Billing Rate = Direct Hourly Rate x Field Multiplier listed in Table 2*

| Table 2: Schedule of Overhead Rates for Consultants and all Subconsultants | | | | |
|---|---------------|--------------|--------------------|--------------|
| Company | Office | Field | MULTIPLIERS | |
| | | | OFFICE | FIELD |
| STV Incorporated | 132.37% | 114.77% | 2.3237 | 2.1477 |
| Capitol Government Contract Specialist | 111.00% | | 2.1100 | |
| Global Innovations, U.S. A.* | 41.00% | N/A | 1.4100 | N/A |
| Jade Associates* | 82.00% | 79.94% | 1.8200 | 1.7994 |
| Telamon Engineering Consultants* | 183.29% | | 2.8329 | |
| Turner Engineering (W2 Employees) | 109.05% | | 2.0905 | |
| Turner Engineering (Independent Consultant) | 48.29% | | 1.4829 | |
| Virginkar & Associates Incorporated | 124.83% | | 2.2483 | |
| Wilson Ihrig | 214.81% | | 3.1481 | |

* Audited rate is not available, negotiated rate is utilized.

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 Agreement.

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. 2 C.F.R §§ 200.318(i) and 200.333.

IV. DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters, which is incorporated into this Agreement.

V. LOBBYING CERTIFICATION

See Certification Regarding Lobbying, which is incorporated into this Agreement.

VI. PROMPT PAYMENT

See SBE/DBE Requirements, attached to this Agreement.

VII. 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.

VIII. CIVIL RIGHTS

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

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

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

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

reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

IX. 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 Agreement:

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.

X. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XII. 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.

XIII. 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.

XIV. 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.

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

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

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

XVI. 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.

XVII. DRUG AND ALCOHOL TESTING (*applicable to performance of safety-sensitive functions*)

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.

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XX. 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.

XXI. 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.

XXII. 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 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.

XXIII. 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.

XXIV. 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.

XXV. 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.

XXVI. 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.

XXVII. 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 subcontractors:

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

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. 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. SFMTA has signed the federal assurances regarding non-discrimination 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.

A. 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.

B. 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.

III. SBE/DBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

B. SBE and DBE Participation Goals

Goals of 21 percent SBE and 4 percent Woman-owned DBE have been established for this contract. These goals will apply to the following types of contracts or scope of work in the contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection,

Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

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:

a. 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.

b. 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.

c. 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.

d. 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.

e. 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
(415) 701-4362
Attn: Sheila Evans-Peguese

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 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.

ENCLOSURE 4

Contract Nos. SFMTA-2020-50

As-Needed Specialized Vehicle Engineering and Other Related Consulting Services Agreement

**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

WSP USA Inc.

For

**AS-NEEDED SPECIALIZED VEHICLE ENGINEERING AND
OTHER RELATED CONSULTING SERVICES**

Contract No. SFMTA-2020-50

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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
WSP USA Inc.
Contract No. SFMTA-2020-50**

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

Recitals

K. The SFMTA wishes to obtain qualified consultants to provide as-needed specialized vehicle engineering services to supplement the Transit Division staff in the support of the procurement, rehabilitation, maintenance and support of its transit vehicle fleet, transit related equipment, maintenance of way, various transit systems and facilities.

L. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21 through a Request for Proposals (RFP) issued on April 14, 2020, pursuant to which City selected Contractor as one of the highest-qualified scorers.

M. The Small Business Enterprise (SBE) subcontracting participation requirement for this Agreement is 21%, and the Woman-owned Business Enterprise (WBE) subcontracting participation requirement for this Agreement is 4%.

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

O. The City's Civil Service Commission approved Contract No. 44741-19/20 for this Agreement on September 16, 2019.

Now, THEREFORE, the parties agree as follows:

Article 15 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:

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

15.2 “**CCO**” means SFMTA Contract Compliance Office.

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

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

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

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

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

15.8 “**Contractor**” or “**Consultant**” means WSP USA Inc., 425 Market St. 17th floor, San Francisco, CA 94105.

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

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

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

15.12 “**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.

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

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

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

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

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

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

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

15.20 “Task Order” means a written directive from the SFMTA to the Consultant to perform specified work.

15.21 “Woman’s Business Enterprise” or “WBE” means a disadvantaged business enterprise (DBE), as defined in 49 CFR Section 26.5, that is at least 51 percent owned by women, or, in the case of a corporation, in which 51 percent of the stock is owned by women. See also Appendix E.

Article 16 Term of the Agreement

16.1 The term of this Agreement shall commence on the later of: (i) November 1, 2020; or (ii) the Effective Date, and expire on October 31, 2025, unless earlier terminated as otherwise provided herein.

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

Article 17 Financial Matters

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

new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

17.2 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).

17.3 Compensation.

17.3.1 Amount. Compensation under this Agreement shall be based on either a negotiated lump sum price per task or subtask, or actual direct costs plus a negotiated fixed profit per subtask and task. In no event shall the amount of this Agreement exceed Five Million Dollars (\$5,000,000).

17.3.2 Method of Computing Compensation

a. Direct Labor Rates. The direct labor rates in Appendix B shall be fixed at that level until 12 months after the Effective Date. Direct Salary Rates in Appendix B may be adjusted 12 months after the Effective Date. No single rate may be increased by more than three percent without prior written approval of the SFMTA.

b. Overhead. The Consultant's compensation under this Agreement will be based on and shall not exceed the combined overhead and salary burden rates as shown on the Calculation of Charges attached as Appendix B. The rates in Appendix B may be adjusted annually with prior written approval from the Project Manager. The Consultant's and Subconsultants' combined overhead and salary burden rates are subject to audit in compliance with Federal requirements.

The overhead rates attached as Appendix B, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within 180 Days of the end of Consultant's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Consultant shall submit to the Project Manager Consultant's and all Subconsultants' actual rates during the term of this Agreement. For each rate paid to the Consultant that exceeds the Consultant's or any Subconsultant's actual rate, the Consultant shall reimburse to the City the total difference between the rate paid and Consultant's or Subconsultant's actual rate during the term of this Agreement. Consultant shall reimburse

City within 30 Days of written notice from City seeking reimbursement. For each actual overhead rate of Consultant or Subconsultant that exceeds the rate paid to Consultant, City shall pay to Consultant the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Consultant within 60 Days of City's receipt of all of Consultant's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Consultant's rates as provided above.

c. Reimbursable Costs. This Agreement is subject to federal regulations concerning the reimbursement and audit of expenses, costs and overhead as set forth in the "Uniform Administrative Requirements, Cost Principles, And Audit Requirements For Federal Awards," 2 CFR Part 200 et seq., and, for for-profit organizations, the cost principles in 48 CFR Part 31 (collectively, the Federal Cost Requirements). The Consultant acknowledges that it is familiar with the Federal Cost Requirements. Consultant shall not seek reimbursement and the City shall not pay reimbursement to Consultant for costs (including but not limited to direct costs, indirect costs, and overhead) that are not compensable under the Federal Cost Requirements. Consultant understands and acknowledges that the City shall not reimburse Consultant for Consultant's costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments to Consultant 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 Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses are to be pre-approved by the SFMTA, and Consultant must obtain the best air fare available in a timely fashion. All travel receipts must accompany the invoice.

e. Non-Reimbursable Expenses. Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for the services of this Agreement. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable.

f. Use of Public Transportation. San Francisco is a transit-first city, and the SFMTA encourages Consultant and Subconsultants to use public transit in performance of its services to the maximum extent possible. The SFMTA will closely review the Consultant's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Transportation network companies and hired

cars (other than taxis) are not considered public transit. The City reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

17.3.3 Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B (Calculation of Charges), attached hereto and incorporated by reference as though fully set forth herein. Compensation shall be made for Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. The City will make payment within 30 Days of receipt of the invoice, unless the City notifies the Contractor that a dispute or correction as to the invoice exists. The breakdown of labor and overhead rates associated with this Agreement appears in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

17.3.4 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. The City may reject Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement; in such a case, Contractor must replace the non-conforming work without delay and at no cost to the City.

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

17.3.6 Invoice Format. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. The Consultant shall submit invoices for all allowable charges incurred in the performance of each Task Order. No more than one invoice per task shall be submitted in a month. The Consultant shall submit invoices containing the following information:

- (a) Contract Number;
- (b) Task Order Number;
- (c) Description of the work performed or services rendered;
- (d) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced;
- (e) Other direct costs;
- (f) Subconsultant costs supported by invoice itemization in the same format as described here;

- (g) Fixed Fee for current invoice period and amount of Fixed Fee as of date of invoice. Fixed Fee will be calculated as a prorated portion of the total fixed fee for the task for which Consultant seeks payment;
- (h) Total costs;
- (i) SFMTA Form No. 6 – Progress Payment Report.

17.3.7 Required Form for Payment. The City is not authorized to pay invoices submitted by Consultant prior to Consultant’s submission of the completed SFMTA Progress Payment Report (Form No. 6). Consultant shall pay its Subconsultants within three Working Days after receiving payment from the SFMTA, except as otherwise authorized by the SBE/DBE Program (see Appendix E). If the Progress Payment Report is not submitted with Consultant’s invoice, the SFMTA may withhold 20 percent of the approved payment due pursuant to that invoice until the SFMTA Progress Payment Report is provided. Following the SFMTA’s payment of an invoice, Consultant must submit, within five Days, a verification of its payments to Subconsultants for the work they have performed via the SFMTA’s B2GNow System (<https://sfmta.diversitycompliance.com/>). Failure to provide such verification shall be cause for the SFMTA to suspend progress payments to Consultant.

17.3.8 Getting Paid for Goods and/or Services from the City.

a. All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City’s Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

b. The following information is required to sign up: (i) The enroller must be their company’s authorized financial representative, (ii) the company’s legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company’s U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company’s bank account information, including routing and account numbers.

17.3.9 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). 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 Term and the other provision(s), the Grant Term shall apply.

c. Flow-Down. 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.

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

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

17.6 Reserved. (Payment of Prevailing Wages)

Article 18 Services and Resources

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

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

18.3 Presentations. In the performance of assigned tasks, the Consultant, 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.

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

18.4.1 Scope of Work. The SFMTA will prepare the scope of work and expected time of completion using the Task Order Request Form (Appendix C) and transmit the Task Order Request Form to the Consultant with a request for a proposal for the performance of the task. The Task Order Request Form will be finalized upon successful negotiation of the task.

18.4.2 Consultant Proposal. The Consultant shall prepare and submit a proposal for the task showing:

- a.** A work plan that includes a detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;
- b.** Milestones for completion for each subtask and deliverables at each milestone;
- c.** Personnel and the Subconsultants assigned to each part of the work, along with résumés or curriculum vitae that indicates why each of the personnel are qualified to perform the work; and prior experience in performing work of this nature; if not included in the original proposal;
- d.** A detailed cost estimate for each task or subtask showing:
 - (i)** Estimated hours and direct salaries by position (hourly rates by position as listed in Appendix B for both Consultant and Subconsultant personnel). Labor hours for preparing monthly invoices or filling out required SBE forms will not be allowed. Consultant will manage Subconsultants so additional Subconsultant program management labor hours will not be allowed. Overtime labor hours will not be allowed without prior written

approval. If overtime is approved, it will be billed at the basic billing rates listed and not at one and one half times the billing rate;

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

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

(iv) Proposed profit as follows:

- Proposed profit of Consultant's work effort as a fixed fee amount not to exceed seven percent of Consultant's estimated direct salaries and overhead costs; and
- For work performed by all Subconsultants, proposed total mark-up for Consultant on Subconsultant's work effort as a fixed fee not to exceed three percent of Subconsultant's total labor charges.

18.4.3 Negotiation of Cost and Profit. The Project Manager will review the proposal and negotiate either a lump sum price or a fixed profit to perform the work of each subtask and task and either a total price or a total not to exceed cost for the task.

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

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

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

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

18.4.8 Changes. Agreed lump sum prices and fixed profits for subtasks and tasks cannot be modified unless there is a material change in the scope of work of the task. If there is a material change in the scope of work of a task, then a proposal, negotiations, and

Record of Negotiations shall be required before changes to agreed lump sum prices and fixed profits can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

18.4.9 Failure to Agree on Terms of Task. In the event that the SFMTA and Consultant 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 Consultant 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 Consultant refuse to undertake a City-ordered task.

18.5 Key Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Consultant's authorized Subcontractors) to perform the Services. Contractor shall comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement. Contractor agrees that the following key team members (Key Personnel) shall be committed and assigned to provide services under this Agreement to the level required by the SFMTA for the term of the Agreement, and except as provided below or as otherwise approved by the SFMTA in writing, shall be staffed at the local Consultant offices within the San Francisco Bay Area for all such time:

Local Key Personnel

- Alva Carrasco: Project Manager
- Ted Woods, PE: Deputy Project Manager
- Alex Jenkins, PE: Maintenance of Way

Non-Local Key Personnel

- John Drayton: PMP, Bus Coaches Task Lead/Service Planning Lead
- Tiffani Bryant, PE: PMP, Rail Vehicles Task Lead/Other Services
- Naor Wallach: Consulting Systems Task Lead/Other Services
- Dan Quigg: Lead Vehicle Engineer – Bus Coaches
- Michael Collins, PE: Lead Vehicle Engineer – Rail Vehicles (Trolley)
- Sandeep Bhanji: Vehicle Engineering – Trolley
- David Irish, PE: QA/QC Manager
- Arun Virginkar: Reliability, Maintainability, Safety and Human Factors (RMSH)
- Brian Donohue: Systems Engineering Lead
- Mike Palmer: Operations and Maintenance Lead
- Todd Anderson: Test Witnessing/Commissioning
- Auden Kaehler: Cost Analysis (Bus)

- Jewels Carter: Battery Electric Bus Planning and Charging Infrastructure Implementation including Yard Management
- Stephen Bonina: Transit Technology

Contractor shall advise the SFMTA immediately any time one of the Key Team Members deviates from its committed role or time on a 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.

18.6 Current Workload and Available Resources. The Consultant covenants that its current workload and the workload of its Subconsultants will not affect the commencement and the progress of the work under this Agreement. The Consultant 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 Consultant shall make good faith efforts to have all contracts signed with Subcontractors within three weeks of NTP. Consultant shall provide copies of said subcontracts to the SFMTA upon request.

18.7 Transmittal of Work Product. When requested by Agency's Project Manager, and after completion of each task and subtask, the Consultant shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its Subconsultants' work on this Agreement. The Consultant'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.

18.8 Reserved (Reproduction of Work Product).

18.9 Agency's Responsibilities Regarding Submittals. The Agency will review and comment on Consultant's submittals generally within two calendar weeks of submittal. The Agency and Consultant 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 Consultant submittals shall in no way relieve the Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Consultant of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

If Consultant 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 Consultant 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 4.5.2 above.

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

- ARC Alternative + Renewable Construction, LLC
- Capitol Government Contract Specialists (CGCS)
- Chaudhary & Associates
- Raul V. Bravo + Associates (RVB+A)
- TSG Enterprises (dba The Solis Group)
- Turner Engineering
- Virginkar & Associates, Inc (VIA)
- Wilson Ihrig & Associates (Wilson Ihrig)
- Parsons Corporation

18.11 Independent Contractor; Payment of Employment Taxes and Other Expenses

18.11.1 Independent Contractor. For the purposes of this Article 4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours,

accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

18.12 Assignment. The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

Article 19 Insurance and Indemnity

19.1 Insurance.

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

a. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

b. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

c. Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

d. Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each claim. The policy shall at a minimum cover negligent acts, and errors and omissions in connection with the Services, and shall also provide coverage for the following risks:

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

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

e. Reserved. (Cyber and Privacy Coverage).

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

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

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

19.1.3 All policies shall be endorsed to provide 10 days' advance written notice to the City of cancellation for nonpayment of premium, and 30 days' advance written notice to the City of cancellation, for reasons other than nonpayment of premium. Contractor shall provide 30 days advance written notice to the City of any intended non-renewal or reduction in coverage.

Notices shall be sent to the City address set forth in the Section entitled “Notices to the Parties.” All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

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

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

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

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

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

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

19.2 Indemnification for Design Professionals. To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively “Indemnitees”), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of,

pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

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

19.2.2 Intellectual Property Infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of 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.

19.2.3 Severability Clause Specific to Indemnification and/or Defense Obligations. To the extent any Court of competent jurisdiction invalidates any word, clause, phrase, or sentence herein that word, clause, phrase, or sentence, and no other portion, shall be deemed removed from this section. All other words, clauses, phrases and/or sentences remain enforceable to the fullest extent permitted by law.

Article 20 Liability of the Parties

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

20.2 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.

20.3 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 21 Payment of Taxes

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

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

21.2.1 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.

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

21.2.3 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.

21.2.4 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.

21.3 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. The City will pay Contractor any monies withheld under this paragraph, without interest, when Contractor comes into compliance with its obligations.

Article 22 Termination and Default

22.1 Termination for Convenience

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

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

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

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

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

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

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

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

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

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

b. A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to

the satisfaction of the SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

22.1.4 In no event shall the City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by the SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

22.1.5 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.

22.1.6 The City's payment obligation under this Section shall survive termination of this Agreement.

22.2 Termination for Default; Remedies.

22.2.1 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. |
| 4.12 | Assignment |
| Article 5 | Insurance and Indemnity |

| | |
|-----------|---|
| Article 7 | Payment of Taxes |
| 10.9 | Alcohol and Drug-Free Workplace |
| 11.10 | Compliance with Laws |
| 13.1 | Nondisclosure of Private, Proprietary or Confidential Information |

b. Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from the SFMTA to Contractor.

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

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

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

22.2.3 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.

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

22.3 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.

22.4 Rights and Duties upon Termination or Expiration.

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

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|------------|--|
| 3.3.4 | Payment Limited to Satisfactory Services |
| 3.3.9 | Grant-Funded Contracts |
| 3.4 | Audit and Inspection of Records |
| 3.5 | Submitting False Claims |
| Article 5 | Insurance and Indemnity |
| 6.1 | Liability of City |
| 6.3 | Liability for Incidental and Consequential Damages |
| Article 7 | Payment of Taxes |
| 8.1.6 | Payment Obligation |
| 9.1 | Ownership of Results |
| 9.2 | Works for Hire |
| 11.6 | Dispute Resolution Procedure |
| 11.7 | Agreement Made in California; Venue |
| 11.8 | Construction |
| 11.9 | Entire Agreement |
| 11.10 | Compliance with Laws |
| 11.11 | Severability |
| Article 13 | Data and Security |

22.4.2 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 23 Rights In Deliverables

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

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

Article 24 Additional Requirements Incorporated by Reference

24.1 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.

24.2 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.

24.3 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.

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

24.5 Nondiscrimination Requirements

24.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

24.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

24.6 Small Business Enterprise Program.

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

24.6.2 Compliance with SBE Program. Consultant 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 and completing all required SBE/DBE forms. Failure of Consultant to comply with any of these requirements shall be deemed a material breach of this Agreement.

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

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

24.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this Contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.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 Chapter 12Q, 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 Chapter 12Q. 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.

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

24.10 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.

24.11 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, (c) a candidate for that City elective office, or (b) 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.

24.12 Reserved. (Slavery Era Disclosure).

24.13 Reserved. (Working with Minors).

24.14 Consideration of Criminal History in Hiring and Employment Decisions

24.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to

time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

24.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

24.15 Reserved. (Public Access to Nonprofit Records and Meetings)

24.16 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.

24.17 Reserved. (Distribution of Beverages and Water)

24.18 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.

24.19 Reserved. (Preservative-Treated Wood Products).

Article 25 General Provisions

25.1 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: Janet Gallegos
Program Delivery and Support Manager
Muni Metro East Facility, 601 25th St,
San Francisco, CA 94107
janet.gallegos@sfmta.com

To Contractor: John Fisher
425 Market Street, 17th Floor
San Francisco, CA 94105
John.Fisher@wsp.com

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

25.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

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

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

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

25.6 Dispute Resolution Procedure.

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

25.6.2 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.

25.7 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.

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

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

25.10 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.

25.11 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.

25.12 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.

25.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated May 28, 2020. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, implementing task orders shall control over the RFP, and the

Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

25.14 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 City Data, or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

Article 26 SFMTA Specific Terms

26.1 Large Vehicle Driver Safety Training Requirements.

26.1.1 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/largevehicletrainingstandards. 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.

26.1.2 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 27 Data and Security

27.1 Nondisclosure of Private, Proprietary or Confidential Information.

27.1.1 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.

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

27.2 Reserved. (Payment Card Industry (PCI) Requirements).

27.3 Reserved. (Business Associate Agreement)

27.4 Management of City Data and Confidential Information.

27.4.1 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.

27.4.2 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes,

advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

27.4.3 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information, including all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall, within 10 business days, purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, 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 business days of the purge.

Article 28 MacBride Principles And Signature

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

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

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| <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, MTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p> | <p>CONTRACTOR</p> <p>WSP USA Inc.</p> <hr/> <p>John Fisher Vice President</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: 0000008028</p> |
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Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form
- D: Federal Transit Administration (FTA) Requirements
- E: SBE/DBE Program

Appendix A

Scope of Services

1. Description of Services

The Consultant shall provide as-needed specialized consulting services for various projects, including the implementation and completion of various transit vehicle and transit-related equipment procurements, maintenance-of-way projects, operational scenario model projects, asset management projects, service planning projects, various transit system projects, and rehabilitation and replacement projects. Services may include design analysis, structural finite element analysis, engineering calculations, quality control inspection, feasibility studies, administrative support, vehicle acceptance and testing, warranty administration, and cost analyses. The Consultant may be asked to perform other tasks related to the maintenance and operation of the transit vehicles and facilities, including assisting with fare collection, the advanced train control system (ATCS), data communications, the passenger information system, vehicle telematics systems, charging infrastructure software systems, and associated equipment.

The SFMTA will decide, in its sole discretion, which tasks to assign to the Consultant. The SFMTA may use qualified City staff to the extent possible to provide the technical engineering and quality control services. The services to be provided by the Consultant at the direction and to the satisfaction of the SFMTA may include the following:

A. Task 1: Project Management

The Consultant shall support the SFMTA in the day-to-day execution of projects related to its transit vehicles, systems and services. Deliverables may include the following:

1. Project Management Plan (PMP)

Develop, implement, and maintain the PMP for transit-related projects, including all related and supporting management documents.

2. Progress Reports

Provide a series of reports that will summarize the progress of activities. The reports should also track any issues that may have occurred during the past reporting period, their status and resolution. Reports may include, but not be limited to: bi-weekly reports, monthly reports, quality assurance reports, trip reports, Federal Transit Administration (FTA) Quarterly Reports, and other reports required by funding agencies.

3. Meetings

Schedule, attend, and document meetings, conference calls, and other review sessions.

4. Documentation

Prepare documentation (letters, reports, presentations).

5. Tracking Systems

Set up and maintain systems to track all project information to allow a project to be effectively managed. Items to be tracked include correspondence, actions, and change orders.

6. Stakeholder Outreach

Prepare presentations, reports, and responses to requests from stakeholders, such as the FTA.

B. Task 2: Contract Management

The Consultant shall support the SFMTA Project Manager in managing the projects related to its transit vehicles, systems and services, including performing tasks such as:

1. Contract Management

Support oversight and enforcement of bus and rail vehicle procurement and rehabilitation contracts, including verification of requirements, change orders, deliverables, claims, and payments.

2. Schedule Management

Support development and maintenance of the overall project schedules for a variety of fleet-related projects, including oversight of the bus and rail vehicle procurement and rehabilitation schedule, and other transit-related technology projects, such as advanced train control systems. In addition, support integration of the fleet-related project schedules into other projects, such as the Central Subway, Passenger Information System, Clipper 2.0, and Better Market Street projects.

3. FTA Compliance

Conduct reviews, as needed, to verify that the bus and rail vehicles and equipment conform to their respective contract requirements and technical specifications, as well as all federal, state and local requirements. Activities and deliverables may include:

- a. Pre-award and post-delivery Buy America audits, in compliance with 49 CFR Part 663.

- b. Other audits and reviews, as required, to verify that the bus and rail vehicle procurement and rehabilitation contracts are being performed in accordance with all applicable federal, state and local requirements.

4. Cost Estimates

Prepare independent cost estimates and cost analyses for any proposed contracts or contract changes (in accordance with FTA requirements, as applicable); identify responsibilities for the changes, and advise on any resulting impacts in scope, schedule and budget.

C. Task 3: Design Reviews and Evaluation of CDRLs and Submittals

Consultant shall support the SFMTA in the review, outreach and response to submittals from rolling stock and other contractors, including letters, drawings, design review packages and other Contract Deliverable Requirements List (CDRL) items.

1. Specialized Experts

Provide specialized experts, as-needed, to cover all vehicle systems, as well as risk assessments, hazard analyses, reliability analyses and systems integration, among others.

2. Submittal Review and Response

Review and comment on CDRL Items. Review the submittals for compliance with the specifications and meet the project objectives for quality, reliability and maintainability; recommend disposition to the SFMTA. Work with the project team to drive consensus among internal stakeholders to develop an agreed SFMTA position on issues as they arise.

3. System Integration

Support the SFMTA during planned systems integration reviews to ensure that the vehicle and subsystems perform according to the SFMTA's requirements and expectations, including addressing interface issues with concurrent projects, such as Central Subway, Passenger Information System, Clipper 2.0, and Better Market Street.

4. First Article Inspection

Coordinate, attend and oversee First Article Inspections (FAI) for the entire vehicle, including subsystems, establishing a baseline upon which the production units will be based, and changes in configuration will be assessed.

5. Issue Resolution

Conduct research into peer agencies, best practices, required standards, and federal, state and local requirements to provide advice and counsel with regards to issues that may arise. Reports or presentations shall be provided as requested by the SFMTA.

D. Task 4: Quality Assurance (QA) Oversight

The Consultant shall provide QA oversight services to ensure that quality material is used, good workmanship is performed, and work is conducted in accordance with all plans and contract documents, as well as federal, state and local requirements. Activities and deliverables may include:

1. QA Program Oversight

Review the applicable QA programs to assure that the contractor's QA organization follows contractually required processes for controlling the quality of the design, tooling calibration, receiving inspection, corrective actions, and the manufacturing process.

2. QA Production Oversight

Conduct checks, as necessary, to assure that quality records are maintained throughout the manufacturing process at both supplier and subcontractor facilities. Assess quality trends and review with SFMTA staff and the contractor to determine any corrective actions.

3. Quality Assurance Representative

Provide a Quality Assurance Representative (QAR) to provide daily (or weekly) written inspection reports as required by the SFMTA. The QAR will use SFMTA-approved procedures to note any deficiencies and corrective actions required.

4. QA Change Management Oversight

Review the contractor's change control, configuration management, and document management systems to verify that they are capable of complying with the contract provisions and are able to monitor changes from the baseline specification.

5. Receiving Inspection

Provide incoming or receiving inspection at the SFMTA delivery location to determine whether vehicles or equipment have been damaged in transport or at any other time.

E. Task 5: Test Program Oversight

The Consultant shall provide “test program oversight” services to ensure that the prototype bus and rail vehicles, production vehicles, and rehabilitated bus and rail vehicles perform according to the vehicle contract requirements and technical specifications, including all federal, state and local requirements. Activities and deliverables may include:

1. Test Documentation Review

Review and recommend for acceptance the test and evaluation plans and procedures for all materials, components, subsystems, and completed work requiring testing under the specifications.

2. Test Witnessing

Witness design, qualification, acceptance and burn-in tests, as required, including tests at contractor’s or its subcontractors’ facilities, the SFMTA site, or third party location.

3. Vehicle Acceptance

Support the SFMTA in acceptance inspection and testing efforts. Once a vehicle or equipment has been delivered to the SFMTA but before it is accepted, Consultant shall perform a final audit to verify that the necessary documentation (e.g., weight certificates, Car History Book) is provided with the vehicles.

4. Operational Testing

Support operational testing to confirm compatibility with the SFMTA’s existing system, facilities, and equipment; assist with operator orientation.

F. Task 6: Commissioning and Start-up Activities

The Consultant shall support commissioning and start-up activities prior to the start of revenue service for the new vehicle or equipment. Activities and deliverables may include:

- 1.** Review and comment on all support services submittals, including maintenance manuals, parts and operations manuals, training programs, and safety program plans.
- 2.** Verify delivery and configuration of as-built drawings and associated documentation.
- 3.** Support the training program, including testing and acceptance of the training simulator.
- 4.** Support safety certification of the advanced train control systems, the new rail fleet, and other rail systems in accordance with CPUC General Order 164-D; develop

checklists, conduct necessary verifications, obtain sign-off of responsible parties, and prepare mitigation plans, if necessary.

5. Support revenue readiness activities, including maintenance shop readiness, and verification that the vehicle design will meet its operational requirements for SFMTA routes, including range, gradeability and environmental issues.
6. Support coordination activities with interrelated projects, such as the Central Subway Project, ATCS upgrades, Passenger Information System, Clipper 2.0 and Better Market Street.

G. Task 7: Post-Delivery Support

Consultant shall assist the SFMTA in effectively developing and administering a technical support program as required. This program will cover all post-delivery support requirements, including warranty administration, manual updates and field modification management.

Activities and deliverables may include:

1. Ensuring that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided in accordance with the requirements of the applicable procurement contract.
2. Support the oversight and tracking of all field modification work, including review of documentation, verification of configuration management, QA oversight of re-work, re-testing, and spare parts reconfiguration.
3. Monitor the reliability program and work with the SFMTA and the contractor to assure compliance of the fleet with reliability requirements.
4. Assist in the set-up, execution, administration, and monitoring of the warranty program, including identification and resolution of fleet defects.
5. Ensure that the preventive maintenance process and operations and maintenance activities are clearly defined and complete.

H. Task 8: Operations and Maintenance Support

Consultant shall provide other services as-needed by the SFMTA's Transit Division to support the maintenance and operation of the transit vehicles. Activities may include:

1. Review plans, checklists and procedures related to vehicle preventive maintenance.
2. Perform preventive maintenance and inspection audits and reporting.
3. Evaluate and assist with the implementation of modern and cost-effective maintenance methods for vehicles.
4. Provide data analysis to identify spikes and shortfalls in vehicle performance.
5. Review and update operating procedures as necessary.
6. Assist in the development or updating of operating practices and procedures.

7. Perform technical evaluations and assist with the implementation of emerging technologies to improve operations and service delivery.
8. Perform strategic long-term planning of key operations issues.
9. Provide Transit Operations support, including scheduling analyses and service improvement analyses.

I. Task 9: Maintenance of Way

The Consultant shall provide a broad range of specialized services and staff to complete Task Orders issued by the SFMTA, either by direct assignment of its own personnel or through Subconsultants, including, but not limited to, initial planning and programming, specialized analytical studies, and start-up and operations planning. Task Orders may include:

1. Provide support to SFMTA's Maintenance-of-Way Engineering Unit, which includes planning, design review, and field investigation support of transit system improvements, including the traction power system, transit signaling system, and communication system to improve safety and service reliability. **The proposed support work is not intended to conflict with the services to be provided in the RFP for the As-Needed Engineering Services contracts to be issued by the SFMTA's Capital Projects and Construction Division.** The scope of work may also include:
 - a. Prepare design criteria to include and meet all applicable codes and standards.
 - b. Prepare alternate analyses and recommend overall design approaches.
 - c. Perform site investigations and functional analyses.
 - d. Review design packages (plans and specifications)
 - e. Provide technical administrative support (e.g., file drawings, meeting minutes, document control).
 - f. Incorporate SFMTA's QA program requirements into the design and construction packages.
 - g. Identify and develop special testing requirements, system cut-over plans, and start-up plans.
2. Assist in the preparation of procurement contracts for transit infrastructure components and systems; operating equipment; and long-lead items. The task shall include product research, specifying products, and performing alternative analyses.
3. Perform field surveys using licensed surveyors.
4. Prepare project management plans in accordance with FTA requirements.
5. Prepare QA oversight, audits, plans, training and assistance in accordance with FTA requirements.

6. Predict, analyze, prevent, and mitigate noise and vibration from transit operations and equipment, and design and monitor mitigation measures.
7. Perform testing as required by the City, including metallurgical, annual ultrasonic rail testing, and other testing requested by the SFMTA.
8. Perform preliminary and system hazard analyses, failure modes and effects analyses, single-point-of-failure analyses, hazard level classification, and safety certification of systems.
9. Perform systems analyses, including communications systems analyses, systems integration, safety processes, configuration management, and related work.
10. Perform start-up and commissioning of systems, including integration and pre-revenue “dry-run” testing, developing test procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses.
11. Provide oversight and required documentation to obtain certification of the SFMTA’s System Safety and Security Program per CPUC General Order (GO) 164-D. (General Order 164-D requires transit agencies who are building and operating rail fixed guideway systems to establish a System Safety and Security Program.) The scope of work may include:
 - a. Provide safety standards
 - b. Review the system safety program
 - c. Review the contractor’s hazard analyses
 - d. Develop Safety and Security Certification Plans
 - e. Lead Safety & Security Certification Review Committee SSCRC (ongoing)
 - f. Maintain the Audit Conformance Checklist (ongoing)
 - g. Review the safety requirements
 - h. Audit implementation of safety requirements
 - i. Audit resolution of hazards (ongoing)

J. Task 10: Transit Systems

The Consultant shall provide as-needed services supporting the operations and maintenance of existing transit information technology systems (e.g., ATCS, fare collection, communication), including tasks supporting the integration of different systems with each other. Tasks may include:

1. Concept of Operations / Lifecycle Planning

The Consultant shall advise the SFMTA on key issues relating to the most effective means to employ technology systems to assist in operations. This may include developing a procurement and lifecycle strategy.

2. Procurement Support

The Consultant shall conduct industry outreach and advise the SFMTA on the available firms and products for individual procurement efforts. This shall include supporting the request for information (RFI), request for qualifications (RFQ), and request for proposals (RFP) processes, in such ways as:

- a. Maintaining industry contacts and communicating with potential vendors on the SFMTA's behalf.
- b. Facilitating, organizing and staffing RFI or RFP pre-submission meetings.
- c. Facilitating and organizing vendor presentations.
- d. Advising the SFMTA on the nature of each vendor's offering.
- e. Drafting language for inclusion in the RFI, RFQ, RFP and sample contract documents.

3. Design Support

In the design phase of a technology procurement project, the Consultant shall review the system vendor's design documents and advise the SFMTA and the vendor on potential integration issues, discontinuity between the system design and the concept of operations, or potential design deficiencies. The Consultant shall suggest design solutions for these issues in the design phase so they may correct designs at a minimum of delay and expense to the project.

4. Quality Control

During the production/delivery phase of a technology procurement project, the Consultant shall support the SFMTA's quality control efforts to ensure the equipment being delivered is free from manufacturing or design defects.

5. Hardware Integration

During the design and engineering phases, the Consultant shall support the integration of the new system with the other systems present on the SFMTA's vehicles or in the SFMTA's facilities. The Consultant shall be ultimately responsible to the SFMTA for ensuring that the new system is fully integrated with existing systems to the specifications detailed in the Task Order.

During the production/delivery phase, the Consultant shall support the integration of the new system to the vendor's specifications and any additional specifications that other SFMTA consultants have developed. This support may include activities such as:

- a. Developing an installation/deployment plan compatible with daily SFMTA operations and maintenance.
- b. Overseeing the execution of the installation plan in coordination with the SFMTA Project Manager and operations managers

- c. Training any SFMTA staff as needed to support the installation

6. Innovative Solutions

Throughout the system lifecycle, the Consultant shall support SFMTA operations by designing innovative solutions that require integration between one or more existing systems on board vehicles, on the wayside, in the street environment, or in the control center. This support would not necessarily be connected to a new system procurement; rather, the SFMTA would be seeking advice on how to accomplish the SFMTA's stated goals with existing equipment. The Consultant shall suggest modifications to that equipment, or additional purchases to support the SFMTA's goals.

7. List of Systems

Potential systems requiring the support of as-needed services include:

- a. Farebox Collection System
- b. Train Control Systems
- c. Surface Rail Signaling Systems
- d. Traffic Signals and Transit Signal Priority (TSP) systems
- e. Customer Information System
- f. On-Board Vehicle Signs and Announcement Systems
- g. Platform Signs and Announcement Systems
- h. Vehicle Telematics
- i. Charging Infrastructure Software Solution
- j. Automatic Passenger Counter system
- k. Video Surveillance systems
- l. Transit-Only Lane Enforcement (TOLE) System
- m. Collision Avoidance System
- n. DriveCam and SmartDrive systems (used for safety incident detection)
- o. Autonomous Vehicle Technology

K. Task 11: Other Services

Consultant shall provide other services as-needed by Transit Division for the implementation and completion of the Project. Tasks may include:

1. Advise the SFMTA on key issues regarding vehicle and equipment procurement, including compliance, systems integration and deviation from Contract requirements.
2. Support project integration into existing systems and emerging programs; these may include maintenance management systems, project management systems, asset management tracking, or other agency-wide systems.
3. Develop integration plans to ensure that the new vehicles or equipment operates as intended with the existing infrastructure, including track and overhead, substations, wheel rail interface, charging infrastructure and maintenance facilities.

4. Support tasks for long-term fleet planning and replacement, including options, timing and procurement strategies required to maintain the fleet.
5. Support with data collection efforts, such as ridership counts, traffic counts, and pedestrian counts.
6. Support the Agency's Communications & Marketing Division with graphics for maps, posters, reports, one-pagers, marketing material, and other documents.
7. Support data analyses pertaining to service planning activities, including before/after comparisons and trend analysis.
8. Support the Agency's Communications & Marketing Division with outreach efforts, including facilitating meetings and providing logistical help and ambassador resources.
9. Produce or assist with peer reviews and best practice reviews for activities such as off-wire operation, fallback scheduling, and emergency planning.
10. Assist with asset management of transit equipment.
11. Prepare fleet retirement plan to determine the best methodology, cost and schedule to retire vehicles as they are replaced and taken out of service.
12. Conduct data analyses to identify spikes and shortfalls in vehicle performance.
13. Produce or assist with the production of operational scenario models. Models may take into account available ridership, grade, or route data.

Appendix B
Calculation of Charges

Table 1: Direct Salary Hourly Rates by Positions for Consultant and all Subconsultants

| Direct Salary Rates | | | | Office or Field Billing Rate? Include only one. | |
|---------------------|---|-------------------|--------------------|---|----------------------|
| Firm | Position | Name | Direct Hourly Rate | Office Billing Rate* | Field Billing Rate** |
| WSP USA INC | PROJECT MANAGER | Alva Carrasco | \$ 96.64 | \$ 228.13 | |
| WSP USA INC | DIRECTOR, TRS FACILITY | John Drayton | \$ 92.70 | \$ 218.83 | |
| WSP USA INC | DIRECTOR, TRANSIT AND RAIL ENGINEER | Tiffani Bryant | \$ 93.75 | \$ 221.31 | |
| WSP USA INC | LEAD CONSULTANT, TRS FACILITY | Daniel Quigg | \$ 75.00 | \$ 177.05 | |
| WSP USA INC | DIRECTOR, TRANSIT AND RAIL ENGINEER | Michael Collins | \$ 91.88 | \$ 216.89 | |
| WSP USA INC | DIRECTOR, RAIL VEHICLE | Terrance Brunner | \$ 94.40 | \$ 222.84 | |
| WSP USA INC | MANAGING DIRECTOR, ADVISORY SERVICES | Cliff Henke | \$ 95.58 | \$ 225.63 | |
| WSP USA INC | DIRECTOR, TRANSIT AND RAIL ENGINEER | Deenesh Shah | \$ 85.10 | \$ 200.89 | |
| WSP USA INC | DIRECTOR, TRANSIT AND RAIL ENGINEER | Gulzar Ahmed | \$ 88.89 | \$ 209.83 | |
| WSP USA INC | DIRECTOR, RAIL VEHICLE | Brian Donohue | \$ 92.70 | \$ 218.83 | |
| WSP USA INC | DIRECTOR, TRANSIT AND RAIL ENGINEER | Skender Nezaj | \$ 91.42 | \$ 215.81 | |
| WSP USA INC | SR. LEAD CONSULTANT, RAIL VEHICLE | Todd Anderson | \$ 86.11 | | \$ 171.07 |
| WSP USA INC | SR. LEAD CONSULTANT, RAIL VEHICLE | Kevin Johnson | \$ 74.84 | | \$ 148.68 |
| WSP USA INC | DIRECTOR, ADVISORY SERVICES | Auden Kaehler | \$ 88.28 | \$ 208.39 | |
| WSP USA INC | DIRECTOR, TRANSIT AND RAIL ENGINEER | Tim Holden | \$ 90.93 | \$ 214.65 | |
| WSP USA INC | MANAGING DIRECTOR, TRANSIT AND RAIL ENGINEER | Stephen Bonina | \$ 113.36 | \$ 267.60 | |
| WSP USA INC | DIRECTOR, ARCHITECT | Jewels Carter | \$ 92.61 | \$ 218.62 | |
| WSP USA INC | LEAD CONSULTANT, TRANSPORTATION PLANNER | Lance MacNiven | \$ 55.92 | \$ 132.00 | |
| WSP USA INC | SR. CONSULTANT, TRANSPORTATION PLANNER | Christopher Duddy | \$ 42.31 | \$ 99.88 | |
| WSP USA INC | ASSOCIATE CONSULTANT, TRANSPORTATION PLANNER | Shantelle Dreamer | \$ 39.82 | \$ 94.00 | |
| WSP USA INC | ASSOCIATE CONSULTANT, TRANSIT AND RAIL ENGINEER | Kate Shaner | \$ 40.00 | \$ 94.42 | |
| WSP USA INC | ASSOCIATE CONSULTANT, TRANSPORTATION PLANNER | John Heaton | \$ 39.82 | \$ 94.00 | |
| WSP USA INC | SR. LEAD CONSULTANT, ELECTRICAL ENGINEER | Tyler Hughes | \$ 69.72 | \$ 164.58 | |
| WSP USA INC | LEAD CONSULTANT, ELECTRICAL ENGINEER | Phil Jonat | \$ 57.96 | \$ 136.82 | |

| | | | | | |
|-------------------------------------|---|----------------------|-----------|-----------|-----------|
| WSP USA INC | MANAGING DIRECTOR, ARCHITECT | Mark Probst | \$ 113.11 | \$ 267.01 | |
| WSP USA INC | CONSULTANT, TRS FACILITY | Mike Martin | \$ 39.82 | \$ 94.00 | |
| WSP USA INC | MANAGING DIRECTOR, ADVISORY SERVICES | Henry Rosen | \$ 96.34 | \$ 227.42 | |
| WSP USA INC | DIRECTOR, TRANSPORTATION PLANNER | Kristina Svensk | \$ 80.33 | \$ 189.63 | |
| WSP USA INC | SR. MANAGING DIRECTOR, AREA LEADER | John Fisher | \$ 127.52 | \$ 301.02 | |
| WSP USA INC | TRANSIT TECHNOLOGY (BUS) | Severin Skolrud | \$ 57.80 | \$ 136.44 | |
| WSP USA INC | BUS TEST WITNESSING LEAD | Larry Luttrell | \$ 65.97 | | \$ 131.06 |
| WSP USA INC | SR. PRIN. TECHNICAL SPECIALIST | Alex Jenkins | \$ 86.39 | \$ 203.93 | |
| WSP USA INC | SR. ENGINEERING MANAGER | Viktoriya Yanitskaya | \$ 98.56 | \$ 232.66 | |
| WSP USA INC | SR. ENGINEERING MANAGER | Richard B. Johnson | \$ 122.72 | \$ 289.69 | |
| WSP USA INC | SUPV. ENGINEER | Kareem Grace | \$ 77.29 | \$ 182.45 | |
| WSP USA INC | SR SUPV ENGINEER | Lourdines Maniti | \$ 83.78 | \$ 197.77 | |
| WSP USA INC | BUS SYSTEMS LEAD/BUS TECHNOLOGY LEAD | Matt Baratz | \$ 76.68 | \$ 181.01 | |
| WSP USA INC | MARKETING AND OUTREACH | Yosef Yip | \$ 42.08 | \$ 99.33 | |
| WSP USA INC | ASSET MANAGEMENT | Doris Lee | \$ 66.86 | \$ 157.83 | |
| WSP USA INC | PROCUREMENT | Joan Stephan | \$ 96.18 | \$ 227.04 | |
| WSP USA INC | SPECIFICATIONS | Mary Nowee | \$ 93.47 | \$ 220.65 | |
| WSP USA INC | PROJECT CONTROLS | Tim Curtin | \$ 89.14 | \$ 210.42 | |
| WSP USA INC | PROJECT ACCOUNTING | Gregory Schwartzkopf | \$ 61.06 | \$ 144.14 | |
| WSP USA INC | SR PRIN TECHNICAL SPECIALIST | John Maddox | \$ 95.04 | \$ 224.35 | |
| WSP USA INC | SR PRIN TECHNICAL SPECIALIST | Richard Rotenberry | \$ 82.71 | | \$ 164.32 |
| WSP USA INC | SR SUPV ENGINEER | Fadi Walieddine | \$ 97.59 | \$ 230.37 | |
| WSP USA INC | SR ENGINEERING MGR | Michael Hsiao | \$ 97.93 | \$ 231.17 | |
| WSP USA INC | SR ENGINEER | Michael Macniven | \$ 51.32 | \$ 121.15 | |
| Virginkar & Associates, Inc. | PROJECT MANAGER | Frank Guzzo | \$ 73.00 | \$ 164.13 | |
| Virginkar & Associates, Inc. | VEHICLE ENGINEER | Arun Virginkar | \$ 88.00 | \$ 197.85 | |
| Virginkar & Associates, Inc. | INTEGRATION ENGINEER | Jim Zehm | \$ 72.00 | \$ 161.88 | |
| Virginkar & Associates, Inc. | QUALITY MANAGER | Scott Rodda | \$ 88.00 | \$ 197.85 | |
| Virginkar & Associates, Inc. | FIELD INSPECTOR | Ray Higuera | \$ 64.80 | | \$ 145.69 |
| Virginkar & Associates, Inc. | FIELD INSPECTOR | Gary Guevin | \$ 53.30 | | \$ 119.83 |
| Virginkar & Associates, Inc. | FIELD INSPECTOR | Clark Kidwell | \$ 53.30 | | \$ 119.83 |
| Raul V. Bravo + Associates, Inc. | RAIL VEHICLE INSPECTOR | Paul Burys | \$ 55.34 | \$ 132.06 | |
| Raul V. Bravo + Associates, Inc. | RAIL VEHICLE MAINTENANCE | Eugene C Garzone | \$ 80.00 | \$ 190.91 | |
| Raul V. Bravo + Associates, Inc. | MAINTENANCE SME | Karl Johnson | \$ 65.00 | \$ 155.12 | |

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|----------------------------------|-------------------------|-----------------------|-----------|-----------|-----------|
| Raul V. Bravo + Associates, Inc. | RAIL VEHICLE INSPECTOR | Daniel Kelly | \$ 62.28 | \$ 148.62 | |
| Raul V. Bravo + Associates, Inc. | SENIOR CONSULTANT | James LaRusch | \$ 80.00 | \$ 190.91 | |
| Raul V. Bravo + Associates, Inc. | SENIOR VEHICLE ENGINEER | Louis J. Maffei | \$ 98.50 | \$ 235.06 | |
| Raul V. Bravo + Associates, Inc. | SENIOR PROJECT MANAGER | Nicholas Semchuk | \$ 90.00 | \$ 214.78 | |
| Chaudhary & Associates, Inc. | PROJECT MANAGER | Sudhir Chaudhary, PLS | \$ 83.00 | | \$ 231.85 |
| Chaudhary & Associates, Inc. | PROJECT SURVEYOR | Helmut Korstick, PLS | \$ 70.00 | | \$ 195.54 |
| Chaudhary & Associates, Inc. | SURVEY TECHNICIAN | Francisco Sanchez | \$ 50.00 | | \$ 139.67 |
| Chaudhary & Associates, Inc. | SURVEY TECHNICIAN | Dean Mackey | \$ 47.00 | | \$ 131.29 |
| Chaudhary & Associates, Inc. | SURVEY PARTY CHIEF | Staff | \$ 49.00 | | \$ 136.88 |
| Chaudhary & Associates, Inc. | INSTRUMENTPERSON | Staff | \$ 48.00 | | \$ 134.08 |
| Chaudhary & Associates, Inc. | RODPERSON | Staff | \$ 46.00 | | \$ 128.50 |
| Parsons | SYSTEMS ENGINEERING | Harish Piniseti | \$ 97.59 | \$ 219.23 | |
| Parsons | SYSTEMS ENGINEERING | Richard Wong | \$ 97.33 | \$ 218.64 | |
| Parsons | SYSTEMS ENGINEERING | Rachana Piniseti | \$ 76.11 | \$ 170.97 | |
| Parsons | SYSTEMS ENGINEERING | Hardik Kapoor | \$ 39.00 | \$ 87.61 | |
| Parsons | SYSTEMS ENGINEERING | Emily Silverman | \$ 82.50 | \$ 185.33 | |
| Parsons | SYSTEMS ENGINEERING | Sam Al-Mohamadi | \$ 72.10 | \$ 161.97 | |
| Parsons | SYSTEMS ENGINEERING | Art Aroonlap | \$ 60.11 | \$ 135.03 | |
| Parsons | SYSTEMS ENGINEERING | Dave Bott | \$ 73.54 | \$ 165.20 | |
| Parsons | SYSTEMS ENGINEERING | Juan Gimenez | \$ 53.94 | \$ 121.17 | |
| Parsons | SYSTEMS ENGINEERING | Mohan Sunderraj | \$ 108.94 | \$ 244.72 | |
| Parsons | SYSTEMS ENGINEERING | Sravani Tadanki | \$ 86.54 | \$ 194.40 | |
| Parsons | SYSTEMS ENGINEERING | Chris March | \$ 67.64 | \$ 151.95 | |
| Parsons | SYSTEMS ENGINEERING | Jacob-Bacon Howell | \$ 55.84 | \$ 125.44 | |
| Parsons | SYSTEMS ENGINEERING | Betty Chang | \$ 105.61 | \$ 237.24 | |
| Parsons | SYSTEMS ENGINEERING | Chris Ortega | \$ 66.51 | \$ 149.41 | |
| Parsons | SYSTEMS ENGINEERING | Jon Hulse | \$ 97.11 | \$ 218.15 | |
| Parsons | SYSTEMS ENGINEERING | Ken MacKenzie | \$ 57.31 | \$ 128.74 | |
| Parsons | SYSTEMS ENGINEERING | Teresa Malone | \$ 74.61 | \$ 167.60 | |
| Parsons | SYSTEMS ENGINEERING | Derek Pines | \$ 105.66 | \$ 237.35 | |
| Parsons | SYSTEMS ENGINEERING | Ram Parthasarathy | \$ 63.45 | \$ 142.53 | |
| Parsons | SYSTEMS ENGINEERING | Naor Wallach | \$ 106.62 | \$ 239.51 | |
| Parsons | SYSTEMS ENGINEERING | Nidhi Sharma | \$ 56.64 | \$ 127.24 | |
| Parsons | SYSTEMS ENGINEERING | Alapan Chakraborty | \$ 78.77 | \$ 176.95 | |
| Parsons | SYSTEMS ENGINEERING | Vincent Riden | \$ 66.93 | \$ 150.35 | |
| Parsons | SYSTEMS ENGINEERING | Allen Chen | \$ 86.28 | \$ 193.82 | |
| Parsons | SYSTEMS ENGINEERING | Emilo Tovar | \$ 45.43 | \$ 102.05 | |
| Parsons | SYSTEMS ENGINEERING | Kenneth Diemunsch | \$ 83.96 | \$ 188.61 | |

| | | | | | |
|------------------------------|-----------------------------------|---------------------|-----------|-----------|--|
| Parsons | SYSTEMS ENGINEERING | David Norman | \$ 89.83 | \$ 201.79 | |
| Parsons | SYSTEMS ENGINEERING | David Nolle | \$ 106.09 | \$ 238.32 | |
| Parsons | SYSTEMS ENGINEERING | Lori Colangelo | \$ 129.67 | \$ 291.29 | |
| Parsons | SYSTEMS ENGINEERING | John Hofbauer | \$ 114.91 | \$ 258.13 | |
| Parsons | SYSTEMS ENGINEERING | Sandeep Bhanji | \$ 96.15 | \$ 215.99 | |
| Parsons | SYSTEMS ENGINEERING | Smitesh Sukumar | \$ 56.63 | \$ 127.21 | |
| Parsons | SYSTEMS ENGINEERING | Steve Adkins | \$ 77.79 | \$ 174.75 | |
| Parsons | SYSTEMS ENGINEERING | David Penrose | \$ 87.17 | \$ 195.82 | |
| Parsons | DEPUTY PROJECT MANAGER | Ted Woods | \$ 109.88 | \$ 246.83 | |
| Parsons | QA/QC MANAGER | David Irish | \$ 79.21 | \$ 177.94 | |
| Parsons | SAFETY MANAGER | John Cockle | \$ 90.15 | \$ 202.51 | |
| Parsons | OPERATIONS & MAINTENANCE | Mike Palmer | \$ 94.14 | \$ 211.48 | |
| Turner Engineering Corp. | SENIOR MANAGING ENGINEER | Andy Pattantus | \$ 100.00 | \$ 209.05 | |
| Turner Engineering Corp. | RAMS ENGINEER | Bernice Lopp | \$ 80.00 | \$ 167.24 | |
| Turner Engineering Corp. *** | SENIOR SOFTWARE ENGINEER | Bradley Banks (IC) | \$ 193.20 | \$ 286.50 | |
| Turner Engineering Corp. | VEHICLE TEST ENGINEER | Brandon Whang | \$ 45.00 | \$ 94.07 | |
| Turner Engineering Corp. *** | SENIOR VEHICLE / SYSTEMS ENGINEER | Bryan Lawrence (IC) | \$ 65.00 | \$ 96.39 | |
| Turner Engineering Corp. *** | SENIOR ELECTRICAL ENGINEER | Brian Ng (IC) | \$ 125.00 | \$ 185.36 | |
| Turner Engineering Corp. | TECHNICAL DIRECTOR | David Turner | \$ 135.00 | \$ 282.22 | |
| Turner Engineering Corp. | RAMS ENGINEER | Eric Eom | \$ 45.00 | \$ 94.07 | |
| Turner Engineering Corp. | VEHICLE / SYSTEMS ENGINEER | Erick Garcia | \$ 55.00 | \$ 114.98 | |
| Turner Engineering Corp. | VEHICLE / SYSTEMS ENGINEER | Frank Nicholas | \$ 70.00 | \$ 146.34 | |
| Turner Engineering Corp. | VEHICLE / SYSTEMS ENGINEER | Gary Thompson | \$ 65.00 | \$ 135.88 | |
| Turner Engineering Corp. | ENGINEERING ANALYST | Geoff Elsmore | \$ 50.00 | \$ 104.53 | |
| Turner Engineering Corp. | PROJECT MANAGER | John Otis | \$ 65.00 | \$ 135.88 | |
| Turner Engineering Corp. *** | SENIOR STRUCTURAL ENGINEER | Mahsa Azad (IC) | \$ 135.00 | \$ 200.19 | |
| Turner Engineering Corp. | PROJECT MANAGER, TEST WITNESS | Michael Thornburg | \$ 75.00 | \$ 156.79 | |
| Turner Engineering Corp. *** | NOISE & VIBRATION ENGINEER | Neil Shaw (IC) | \$ 135.00 | \$ 200.19 | |
| Turner Engineering Corp. | RAMS ENGINEER | Noah Jones | \$ 55.00 | \$ 114.98 | |
| Turner Engineering Corp. | SENIOR VEHICLE / SYSTEMS ENGINEER | Steve Lawrence | \$ 105.00 | \$ 219.50 | |
| Capitol GCS | BUS ACQUISITION CONSULTANT | Mark Beauchamp | \$ 77.43 | \$ 163.38 | |
| Capitol GCS | SENIOR TRANSIT CONSULTANT - BUS | Milo Victoria | \$ 128.49 | \$ 271.11 | |

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|--|--|-----------------|-----------|-----------|--|
| Capitol GCS | SENIOR TRANSIT CONSULTANT - RAIL | Rick Tripoli | \$ 125.00 | \$ 263.75 | |
| Capitol GCS | SENIOR CONTRACT MANAGER | Maria Lechuga | \$ 46.30 | \$ 97.69 | |
| The Solis Group | SCHEDULER | Bob Maddox | \$ 85.00 | \$ 227.87 | |
| The Solis Group | SCHEDULER | Bruce Jones | \$ 85.00 | \$ 227.87 | |
| The Solis Group | SCHEDULER | Rodney Aratani | \$ 90.00 | \$ 241.27 | |
| Wilson Ihrig | PRINCIPAL | Derek Watry | \$ 78.04 | \$ 245.68 | |
| Wilson Ihrig | PROJECT MANAGER | Gary Glickman | \$ 74.68 | \$ 235.10 | |
| Wilson Ihrig | ASSOCIATE | Patrick Faner | \$ 41.78 | \$ 131.53 | |
| Wilson Ihrig | ASSOCIATE | Sarah Kaddatz | \$ 41.78 | \$ 131.53 | |
| ARC Alternative and Renewable Construction | ASSET AND REQUIREMENTS MANAGER | Carlos Campillo | \$ 108.00 | \$ 226.80 | |
| ARC Alternative and Renewable Construction | CONTRACT ADMINISTRATION MANAGER | Anne Koenig | \$ 108.00 | \$ 226.80 | |
| ARC Alternative and Renewable Construction | PROJECT CONTROLS ENGINEER | Jeslin Varghese | \$ 100.00 | \$ 210.00 | |
| ARC Alternative and Renewable Construction | QUALITY CONTROL AND ASSURANCE MANAGER | Helen Cary | \$ 75.00 | \$ 157.50 | |
| ARC Alternative and Renewable Construction | IT CONTROLS AND SECURITY MANAGER | Tarek Fahmy | \$ 75.00 | \$ 157.50 | |

**Office Billing Rate = Direct Hourly Rate x Office Multiplier listed in Table 2*

***Field Billing Rate = Direct Hourly Rate x Field Multiplier listed in Table 2*

| Table 2: Schedule of Overhead Rates for Consultants and all Subconsultants | | | | |
|---|---------------|--------------|--------------------|--------------|
| Company | Office | Field | MULTIPLIERS | |
| | | | OFFICE | FIELD |
| WSP USA Inc | 136.06% | 98.67% | 2.3606 | 1.9867 |
| RVBA | 138.64% | | 2.3864 | |
| Virginkar & Associates, Inc. | 124.83% | | 2.2483 | |
| Chaudhary | 117.40% | 179.34% | 2.1740 | 2.7934 |
| Parsons | 124.64% | 94.11% | 2.2464 | 1.9411 |
| Turner Engineering Corp. -- W2 Staff | 109.05% | | 2.0905 | |
| Turner Engineering Corp. - Independent Contractor | 48.29% | | 1.4829 | |
| Capitol GCS | 111.00% | | 2.1100 | |
| The Solis Group | 168.08% | | 2.6808 | |
| Wilson Ihrig | 214.81% | | 3.1481 | |
| ARC* | 110.00% | | 2.1000 | |

** Audited rate is not available, negotiated rate is used.*

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: xxx.xx % |
| Account: _____ Fund: _____ Dept: _____ Authority: _____ | |
| Project: _____ Activity: _____ | |
| Project Title: _____ | |
| Work to be Performed: | |

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 Agreement.

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. 2 C.F.R §§ 200.318(i) and 200.333.

IV. DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters, which is incorporated into this Agreement.

V. LOBBYING CERTIFICATION

See Certification Regarding Lobbying, which is incorporated into this Agreement.

VI. PROMPT PAYMENT

See SBE/DBE Requirements, attached to this Agreement.

VII. 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.

VIII. CIVIL RIGHTS

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

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

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

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

reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

IX. 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 Agreement:

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.

X. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XII. 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.

XIII. 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.

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

C. 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.

D. 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.

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

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

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

XVI. 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.

XVII. DRUG AND ALCOHOL TESTING (*applicable to performance of safety-sensitive functions*)

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.

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XX. 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.

XXI. 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.

XXII. 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 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.

XXIII. 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.

XXIV. 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.

XXV. 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.

XXVI. 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.

XXVII. 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 subcontractors:

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

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. 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. SFMTA has signed the federal assurances regarding non-discrimination 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.

A. 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.

B. 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.

III. SBE/DBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

C. SBE and DBE Participation Goals

Goals of 21 percent SBE and 4 percent Woman-owned DBE have been established for this contract. These goals will apply to the following types of contracts or scope of work in the contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection,

Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

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:

a. 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.

b. 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.

c. 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.

d. 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.

e. 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
(415) 701-4362
Attn: Sheila Evans-Peguese

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 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.