

**THIS PRINT COVERS CALENDAR ITEM NO.: 11**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Transit

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to issue a Request for Proposals for Contract No. SFMTA-2024-20-FTA for Consulting Services supporting the Communications-Based Train Control Upgrade Project for an initial term of five years in an amount not to exceed \$25,000,000, with five options to extend the term for an additional year, for a total of ten years in an amount not to exceed \$36,000,000.

**SUMMARY:**

- The SFMTA operates the Muni Metro light rail system, which includes dedicated subways controlled by an outdated loop cable-based Automatic Train Control System (ATCS) that first went into service in 1998 and has reached the end of its useful life.
- In March 2023 the SFMTA issued a Request for Proposals for a Communications-Based Train Control (CBTC) system to replace the ATCS and extend train control territory to surface portions of Muni’s rail network, which will leverage significant technological advances in train control that will enable the SFMTA to maintain the excellent safety record of the current system, while also improving reliability, reducing delays and increasing passenger capacity.
- The SFMTA seeks to issue an additional Request for Proposals for Consulting Services to support the SFMTA in the procurement, design, engineering, contract administration, integration, construction management, deployment, and acceptance of the new CBTC.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Funding Plan
3. RFP and Sample Agreement Documents

**APPROVALS:**

DIRECTOR  \_\_\_\_\_

**DATE**

November 2, 2023

SECRETARY  \_\_\_\_\_

November 1, 2023

**ASSIGNED SFMTAB CALENDAR DATE:** November 7, 2023

**PURPOSE**

Authorizing the Director of Transportation to issue a Request for Proposals for Contract No. SFMTA-2024-20-FTA for Consulting Services supporting the Communications-Based Train Control Upgrade Project for an initial term of five years in an amount not to exceed \$25,000,000, with five options to extend the term for an additional year, for a total of ten years in an amount not to exceed \$36,000,000.

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

The requested RFP will support the following SFMTA Strategic Goals:

Goal 5: Deliver reliable and equitable transportation services.

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

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

It will support the following City Transit-First Policies:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
4. Transit priority improvements, such as designated transit lanes and streets and improved signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

**DESCRIPTION**

**CBTC Project Background**

The SFMTA Muni Metro system currently relies on an Automatic Train Control System (ATCS) to operate trains automatically in the 7-mile Market Street Subway and the new 1.6-mile Central Subway. All but one of Muni’s rail lines combine into the dual-track Market Street Subway, which requires that trains move quickly through the tunnel to maintain vehicle flow and headways on the branch lines. While many other light rail systems in the United States still

operate using older, fixed-block train control systems, Muni was an early adopter of sophisticated loop-cable based ATCS technology. In service since 1998, the ATCS enables safe, high-frequency service in the core of Muni's light rail network and is the backbone of rail service delivery. However, ATCS technology is now outdated, and the ATCS is at the end of its useful life. In its current condition, train control has caused an increasing number of delays to Muni's rail service due to daily communication failures, train timeouts and component failures. Upgrading the train control system is the investment in Muni infrastructure that will have the greatest benefit to rail service.

The Train Control Upgrade Project (TCUP or Project) is a capital project intended to deliver a modern Communications-Based Train Control (CBTC) system covering both the surface portions of the Muni Metro network and the subways. Replacing the ATCS with a state-of-the-art CBTC will maintain the excellent safety record of the current system, while also increasing the subway's efficiency and reliability. The CBTC will operate along surface trackways to coordinate train movements with street traffic signals, manage surface junctions, vary vehicle speed and dwell times to keep trains evenly spaced, speed train entry into tunnel portals, and provide the SFMTA Transit Management Center with oversight and management of the entire Muni Metro system.

During its first phase, the Project will introduce the new CBTC on the street-level Embarcadero and Third Street corridors, which serves major civic destinations such as Oracle Park, Chase Center, and UCSF Mission Bay, as a pilot. In the second phase, the Project will replace the existing ATCS in the Market Street Subway and Central Subway by overlaying the same CBTC so that Muni Metro train control is provided by a single system. Over the full eight-year span of the Project, CBTC will be extended to the surface branches of the J, K, L, M, N and T lines.

### **CBTC Consultant Services and Scope of Work**

The requested Consultant Services RFP seeks qualified vendors to provide proposals for professional consulting services to support the SFMTA in the procurement, design, engineering, contract administration, integration, construction management, deployment, and acceptance of the new CBTC. The selected firm (Consultant) will provide technical train control expertise and assistance to the SFMTA during the Project. The SFMTA will order services generally described in the awarded contract through the issuance of individual Task Orders which shall be released pursuant to the awarded contract during the contract term.

The SFMTA will use an integrated Project team, which includes dedicated SFMTA management and design staff supported by SFMTA transit operations and maintenance staff working with the CBTC vendor (CBTC Supplier), and one or more separate Installers to design and deliver the CBTC System. SFMTA staff have extensive experience operating transit service with the existing ATCS system; however, the ATCS technology is nearly 30 years old and the design, procurement and installation of the CBTC will require specialized knowledge of CBTC systems that the agency does not possess and cannot easily hire to obtain.

## **PAGE 4.**

A qualified technical services Consultant will have experience from working with a variety of similarly sized transit agencies on projects to procure new train control systems and will be able to support SFMTA in reviewing the vendor's design and monitor the delivery and installation of CBTC technology procured by the Project. The Consultant will be able to provide design recommendations to the Project team based on international best practices and facilitate knowledge transfers with peer agencies. SFMTA will also build its internal expertise by fully staffing the Project team with SFMTA employees and use this Consultant Services contract to augment and train those staff as needed. As SFMTA's expertise grows, the need for CBTC Consultant services is expected to decrease.

This approach is cost effective because it allows the SFMTA to flex the project workforce to reflect the workload as the project goes through periods where the demands on the SFMTA project team ebbs and flows. This avoids the SFMTA becoming the bottleneck at times where SFMTA must review a large number of designs and documents, and also allows the SFMTA to not carry idling workers during periods where most of the Project work is shifted to the system vendor.

The as-needed specialized Consultant Services supporting the SFMTA fall into the following categories:

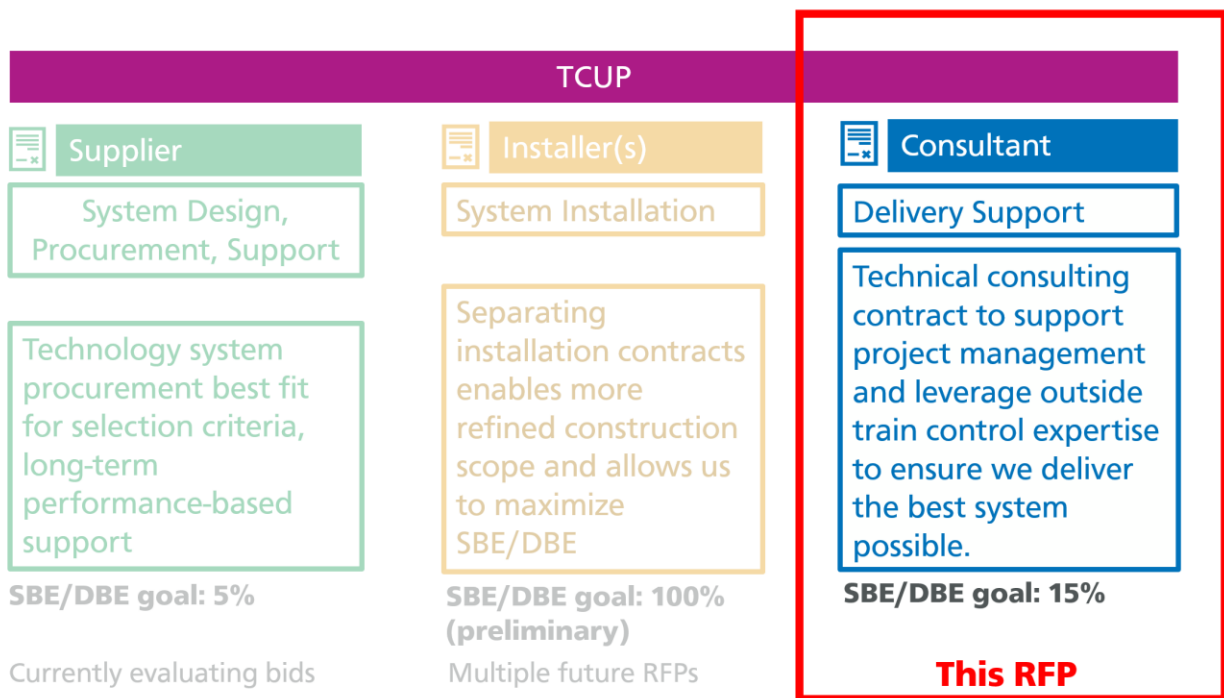
- Project Management
- Contract Management
- Construction Management
- Design and Engineering
- System Integration
- Quality Assurance
- Testing
- Safety and Security
- Commissioning
- Post-Delivery
- Operations and Maintenance

The SFMTA will require continuous support from the Consultant from the beginning of design through Final Acceptance of the CBTC and for the initial provision of support services. The types of skills and the level of Consultant support needed will change as the Project progresses through its different stages. For example, when the Project is in the Design Phase at the beginning of the proposed contract, the SFMTA will need engineers and technical experts to support the CBTC design process and to assist the SFMTA with reviewing design submittals; about two years into the proposed contract as the Project enters construction and procurement phases, the SFMTA's needs will change to focus on construction management, quality assurance, and testing.

## **CBTC Contract Structure**

The SFMTA anticipates awarding one Consultant Services contract with a base term of five years, with five options to extend the term for an additional year. The detailed scope of work will be determined by Task Orders issued as needed, but at least as frequently as every year. Price will be determined by level of effort, applying pre-negotiated personnel rates (including escalation, overhead and profit) and estimated hours.

The SFMTA has issued a separate RFP to select a CBTC Supplier (SFMTA-2022-40-FTA) (Supplier RFP). In 2024, the SFMTA intends to award a contract to the highest-ranking proposer responding to that Supplier RFP, for system procurement and long-term maintenance and support of the system. Under that contract, the Supplier will design the CBTC, furnish the necessary equipment and materials, and inspect, test and commission the installed CBTC. The Supplier will not install wayside equipment, equipment on the light rail vehicles (LRVs), network equipment, or central servers; or perform any activity requiring a California contractor’s license, but the Supplier will oversee, inspect, and accept all wayside work. The SFMTA intends to contract separately with Installer(s) for the infrastructure construction, LRV installation, and wayside equipment installation.



The Consultant selected under the requested RFP will assist the SFMTA in managing the CBTC procurement, preparing, issuing, and managing subsequent RFPs for the Installers, and working with the SFMTA, CBTC Supplier and Installer(s) on system integration and construction management. The Consultant will assist the SFMTA in holding the Supplier and Installers accountable for their performance as prescribed in their respective contracts and will provide guidance based on international best practices and experience with other CBTC procurement projects. Hiring a qualified technical Consultant to mitigate the risk of disputes with the Supplier

and/or Installers was recommended in the Project risk assessment that SFMTA performed in preparation for issuing the Supplier RFP.

### **Selection Process**

Proposals will be evaluated by a committee composed of staff from the SFMTA, which may also include employees from other City departments, peer transit agencies, consultants, or external organizations with subject matter expertise. This committee will score the Proposal and select the proposer with the highest total evaluation score based on predetermined selection criteria. After evaluation of proposals, negotiations for a contract with the highest-ranked proposer will commence. After the negotiation process is completed, the proposed contract will be submitted to the SFMTA Board and the Board of Supervisors for approval.

### **Small Business Enterprise Participation**

SFMTA is committed to maximizing competition and business opportunities for Small Business Enterprise (SBE) and Disadvantaged Business Enterprise (DBE) firms (of which San Francisco Local Business Enterprise [LBE] firms are included). The SFMTA's SBE/DBE Program will be applied to the requested RFP. The SFMTA has set a goal for SBE/DBEs to perform 15% of the Consultant contract work.

### **Procurement Schedule**

The tentative procurement schedule is as follows:

- RFP Issuance: November 14th, 2023
- Proposal Due Date: February 12th, 2024
- Contractor selection: May 2024
- Award date: October 2024

### **STAKEHOLDER ENGAGEMENT**

The Project team conducted extensive outreach to SFMTA staff from Transit Operations, Transportation Management Center, Fleet, Safety, Technology, Vehicle, Maintenance of Way, and Signal Maintenance groups, who provided input on the desired and required CBTC functionality. Importantly, these stakeholders all identified reliability and maintainability as a priority for the new train control system. The technical expertise and delivery support provided by this contract will augment the existing skillset of SFMTA staff and help ensure the SFMTA meets these goals.

### **ALTERNATIVES CONSIDERED**

The SFMTA considered the following alternative to issuing this RFP:

*No contract.* Under this alternative, the SFMTA would manage the Project without Consultant support. This approach would likely result in increased costs and delay to the Project due to the lack of specialized train control project delivery expertise among existing

SFMTA staff and the lack of staff resources during Project delivery. The SFMTA is having trouble hiring senior train control engineers in part because the pool of qualified applicants is so small in the United States and international applicants have difficulty meeting the minimum requirements for San Francisco engineer classifications. A qualified technical services Consultant will have worked with a variety of similarly sized transit agencies on domestic and international projects to procure new train control systems and support the design and delivery of CBTC technology. Without this support, the SFMTA will not benefit from this expertise which may lead to a lower quality design and implementation. Similarly, without Consultant construction management and test witnessing support, the SFMTA has a higher likelihood of encountering work-stopping issues during construction and testing, leading to Project implementation delays and cost overruns.

**FUNDING IMPACT**

Work under the Consultant Services contract planned for completion during the current Capital Improvement Program cycle (23-27) is fully funded. Work planned for completion in future CIP cycles will be funded through future CIP processes. Identified funds include a combination of local, state, and federal fund sources. Expected funding sources are shown in the following table:

<b>Fund Source</b>	<b>Fund Type</b>	<b>Total (\$)</b>
Prop. L	Local	5,000,000
TSF Developer Fees	Local	1,500,000
Prop. B Transit General Fund	Local	3,600,000
SB1 State of Good Repair	State	900,000
TIRCP Grant	State	5,000,000
FTA 5337 State of Good Repair	Federal	20,000,000
Total		36,000,000

**ENVIRONMENTAL REVIEW**

On September 26, 2023, the SFMTA, under authority delegated by the Planning Department, determined that the proposed RFP is not a “Project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The Civil Service Commission approved Personnel Services Contract (PSC) request No 44708 – 21/22 in connection with this contract on April 18, 2022.

The City Attorney’s Office has reviewed this report.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to issue a Request for Proposals for Contract No. SFMTA-2024-20-FTA for Consulting Services supporting the Communications-Based Train Control Upgrade Project for an initial term of five years in an amount not to exceed \$25,000,000, with five options to extend the term for an additional year, for a total of ten years in an amount not to exceed \$36,000,000.



SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The SFMTA operates the Muni Metro light rail system, which includes both shared surface right of way and dedicated subways controlled by an outdated analog loop cable-based Automatic Train Control System (ATCS), which first went into service in 1998, and has reached the end of its useful life; and,

WHEREAS, In March 2023 the SFMTA issued a Request for Proposals for a supplier of a Communications-Based Train Control (CBTC) system to replace the ATCS and extend train control territory to surface portions of Muni’s rail network, which will leverage significant technological advances in train control that will enable the SFMTA to operate its rail service with greater reliability, reduced delays, and increased passenger capacity; and,

WHEREAS, The SFMTA seeks to issue an Request for Proposals for Consulting Services to support the SFMTA in the procurement, design, engineering, contract administration, integration, construction management, deployment, and acceptance of the new CBTC; and,

WHEREAS, The requested Consulting Services will provide the SFMTA with specialized CBTC knowledge and support, and assist the SFMTA with the timely delivery of the new CBTC; and,

WHEREAS, The SFMTA intends to negotiate a single contract with an initial term of five years in an amount not to exceed \$25,000,000, with five options to extend the term for an additional year, for a total of ten years in an amount not to exceed \$36,000,000; and,

WHEREAS, The Civil Service Commission approved Personnel Services Contract (PSC) request No 44708 in connection with this contract on April 18, 2022; and,

WHEREAS, On September 26, 2023, the SFMTA, under authority delegated by the Planning Department, determined that the proposed RFP is not a “Project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

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

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to issue a Request for Proposals for Contract No. SFMTA-2024-20-FTA for Consulting Services supporting the Communications-Based Train Control Upgrade Project for an

initial term of five years in an amount not to exceed \$25,000,000, with five options to extend the term for an additional year, for a total of ten years in an amount not to exceed \$36,000,000; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation, in consultation with the City Attorney, to make nonmaterial corrections and changes to the RFP, sample contract, and appended documents, and to issue addenda to the RFP, as necessary to accomplish the purposes of this Resolution.

I certify that the foregoing resolutions were adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 7, 2023.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

ENCLOSURE 2: PROJECT FUNDING PLAN

<b>Funding Source</b>	<b>Prior to FY23</b>	<b>FY23</b>	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>Future CIPs</b>	<b>Project Total</b>
Operating Funds	\$2,095,000	-	-	-	-	-	\$8,000,000	<b>\$10,095,000</b>
Revenue Bond	\$5,405,000	\$11,672,882	\$23,922,118	-	-	-	-	<b>\$41,000,000</b>
General Fund	\$340,000	-	-	-	-	-	\$24,988,388	<b>\$25,328,388</b>
Transportation Sustainability Fee	\$10,000	-	-	-	-	-	\$8,785,609	<b>\$8,795,609</b>
Prop L	-	-	-	-	\$12,339,439	\$46,491,319	\$29,247,242	<b>\$88,078,000</b>
AB 664	-	-	-	-	-	-	\$2,779,352	<b>\$2,779,352</b>
TIRCP (Caltrans grant)	-	-	-	-	-	\$28,364,282	\$72,211,718	<b>\$100,576,000</b>
SB1 (State of Good Repair)	-	-	-	-	-	-	\$38,600,778	<b>\$38,600,778</b>
FTA (Transit Capital Priorities)	-	-	\$6,014,161	\$40,010,884	\$45,918,992	\$71,097,536	\$128,359,112	<b>\$291,400,685</b>
<b>Total</b>	<b>\$7,850,000</b>	<b>\$11,672,882</b>	<b>\$29,936,279</b>	<b>\$40,010,884</b>	<b>\$58,258,431</b>	<b>\$145,953,137</b>	<b>\$312,972,199</b>	<b>\$606,653,812</b>

**Request for Proposals for  
Consulting Services Supporting the Communications-  
Based Train Control Upgrade Project**

**RFP No. SFMTA-2024-20-FTA**

**EVENT ID: SFGOV-[Insert the number generated by  
the FSP Sourcing Event, e.g., #####.]"**

**(CCO No. 24-1606)**

<b>Date Issued:</b>	<b>November 14, 2023</b>
<b>Pre-Proposal Conference:</b>	<b>December 14, 2023, 10:00 AM PT</b>
<b>Deadline for Questions:</b>	<b>January 15, 2024, 2:00 PM PT</b>
<b>Proposal Due:</b>	<b>February 12, 2024, 2:00 PM PT</b>

<b>Contract Administrator:</b>	<b>Kathy Larson</b>
	<b>Principal Administrative Analyst</b>
	<b>San Francisco Municipal Transportation Agency</b>
	<b>Phone: (415) 646-2471</b>
	<b>Email: <a href="mailto:Kathy.Larson@sfmta.com">Kathy.Larson@sfmta.com</a></b>

**San Francisco Municipal Transportation Agency (SFMTA)**  
**Request for Proposals for Consulting Services Supporting the**  
**Communications-Based Train Control Upgrade Project**

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**Appendices:**

**List additional appendices as needed.**

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## **I. Introduction and Schedule**

### **A. General**

This Request for Proposals (RFP) is being issued by the San Francisco Municipal Transportation Agency (SFMTA or Agency). The SFMTA is seeking qualified suppliers (Proposers) to provide proposals for professional consulting services to support the Agency in the procurement, design, engineering, contract administration, integration, construction management, deployment, and acceptance of a new communications-based train control system (the Project or CBTC Project). The selected consultant will provide technical assistance to the Agency during the CBTC Project, from preliminary design to Final Acceptance. The SFMTA shall order services covered by the awarded contract through the issuance of individual Task Orders which shall be released against the awarded contract during the contract term.

The SFMTA anticipates awarding one contract with a base term of five years, with the option to extend the term in yearly increments up to five additional years (Consulting Contract). The detailed scope of work will be determined by task orders issued as needed, but at least as frequently as every year. Price will be determined by level of effort, applying pre-negotiated personnel rates (including overhead and profit) and estimated hours. The SFMTA plans to award the Consulting Contract to the highest-ranked Proposer (after successful negotiations).

The SFMTA has issued a separate RFP (SFMTA-2022-40-FTA, Supplier RFP) to select a communications-based train control (CBTC) Supplier. In 2024, the SFMTA intends to award a contract to the highest-ranking proposer responding to that Supplier RFP, for system procurement and long-term maintenance and support of the system. Under the CBTC Supplier Contract, the Supplier will design the CBTC System, furnish the necessary equipment and materials, inspect, test and commission the installed System. The Supplier will not install wayside equipment, equipment on the light rail vehicles (LRVs), network equipment, or central servers; or perform any activity requiring a California contractor's license, but the Supplier will oversee, inspect, and accept all wayside work. The SFMTA intends to contract separately with Installer(s) for the infrastructure construction, LRV installation, and wayside equipment installation. The Consultant selected under this RFP will assist the SFMTA in managing the System procurement, preparing, issuing, and managing subsequent RFPs for the Installers, and working with the SFMTA, CBTC System Supplier and Installer(s) on system integration and construction management.

The SFMTA will require continuous support from the Consultant from the beginning of design through Final Acceptance of the CBTC System. The types of skills and the level of Contractor support needed will change as the Project progresses through its different stages (see Project Schedule, Section I.A.3, Figure 3 below). For example, when the Project is in the Design Phase at the beginning of the Consulting Contract, the SFMTA will need engineers and technical experts to support the System design process and to assist the SFMTA with reviewing design submittals; about two years into the Consulting Contract as the Project enters construction and

procurement phases, the SFMTA's needs will change to focus on construction management, quality assurance, and testing.

To avoid organizational conflicts of interest, a proposer who is participating on a team submitting a proposal in response to the Supplier RFP will not be eligible for award under this RFP, and the Consultant (and its subconsultants) awarded a contract under this RFP will not be permitted to participate in the Supplier Contract and the Installer contract(s).

The SFMTA has established a Small Business Enterprise (SBE) participation goal of 15% for this contract.

## **1. Muni Metro Rail System**

The SFMTA oversees the management of streets and ground transportation in San Francisco. SFMTA provides public transit services through its Transit Division, which is also known as the San Francisco Municipal Railway ("Muni"). Muni manages all SFMTA rail, bus, and cable car operations, including the Muni Metro.

The Muni Metro system was assembled from several streetcar lines operated by Muni through the Twin Peaks Tunnel (constructed in 1917) and the Sunset Tunnel (constructed in 1928). The streetcar lines converged onto Market Street until the Bay Area Rapid Transit (BART) Project delivered the Market Street Subway in 1978 which connected to the Twin Peaks Tunnel at Castro (Eureka). With the opening of the Market Street Subway five streetcar lines (the J, K, L, M and N) were converted to light rail and began running fully under Market Street in 1982. Due to this heritage as a converted streetcar System, the Muni Metro was not designed as a true "metro" with fully dedicated right of way along its entire alignment. In addition, because the conversion from streetcar to subway was an offshoot of the BART Project, the Muni Metro's design was narrowly focused to converge all lines into a single track in each direction downtown, as opposed to other major subway networks which disperse lines in patterns more resembling a grid. From this origin, today's Muni Metro must overcome significant limitations on its capacity caused by the way the System is laid out. The Muni Metro System is shown diagrammatically in Figure 1.

In the Market Street Subway, Twin Peaks Tunnel and the Central Subway trains are currently operated by the Automatic Train Control System (ATCS), which commands movements (that is, speed, braking and headway), signals and switches while trains are operating in the subway. On the surface, trains are operated manually by a Train Operator, who can request a routing through each isolated junction or intersection using a Vehicle tagging system, named VETAG. This detection system sends a request to the adjacent interlocking or traffic signal controller and provides permissive signaling and routing. Other rail junctions in the system are completely manual operations, requiring field personnel on-site to physically throw the switch and wave a train through using hand signals.

Muni currently operates three different types of revenue vehicles on the network:

- Siemens LRV4
- Breda LRV2/3
- Heritage fleet

The Breda LRV2/3s are near retirement age and will not be fitted with the new CBTC system.

The SFMTA is in the process of procuring a new fleet of 219 LRV4s from Siemens. 68 of these vehicles have been delivered as expansion vehicles, and 151 of these vehicles are currently being supplied to replace the LRV 2/3s, with individual LRV 2/3s being retired as each new LRV4 goes into service. The replacement is expected to be completed by 2025 and the SFMTA has an option to purchase an additional 30 vehicles by June 30, 2025. Each LRV4 is 75 feet long. LRV4s are designed to operate in one, two, three and four car consists. The Supplier will equip all 219 LRV4s with the CBTC System, and the Supplier Contract includes options for the SFMTA to equip an additional 30 vehicles if they are purchased by the SFMTA.

Figure 1: Muni Metro System



The Heritage fleet is a fleet of 50 vehicles, mainly PCC and Peter Witt cars along with some veteran San Francisco streetcars and 10 very diverse cars including rail vehicles from the UK, Japan, Italy, and Portugal. The main fleet of PCC, Peter Witt, and Milan cars are used in daily service. The other types of cars generally are only used between one to six times per year as part of special events. Muni operates Heritage vehicles on the surface of Market Street and along the Embarcadero, which are excluded from the CBTC territory. The Heritage vehicles operate in CBTC territories of the N Line trackway between Market Street and Caltrain, and the T and J

mainlines for pull-in/pull-out to the yards. The Supplier is required to design the CBTC System so that the Heritage fleet may operate in CBTC territory alongside CBTC equipped LRVs operating on the surface. The SFMTA also maintains a fleet of 26 hi-rail maintenance vehicles that operate on the trackway. The CBTC System is required to track the movements of Heritage vehicles and maintenance vehicles (hi-railers) operating in CBTC territory and route Heritage vehicles and maintenance vehicles through interlockings. The Supplier may accomplish this by installing its equipment on the Heritage vehicles and maintenance vehicles or by some other means.

## **2. Control Centers**

The Transportation Management Center (TMC) houses the SFMTA command and control structure for all Muni transit service (buses, Metro light rail, cable car, and historic streetcars), as well as security and parking enforcement. A portion of the TMC is set aside for rail operations – this section currently hosts the ATCS workstations and can be expected to host the CBTC workstations in the future. The TMC also has positions for representatives of vehicle and wayside maintenance teams as well as engineers. These positions may be fitted with CBTC maintenance and engineering workstations as needed. A diagram of the TMC is included in the Appendix J (Reference Materials).

The subway element of the TMC transferred from the old Operations Control Center (OCC) near West Portal Station in April 2019, which previously provided the supervision of the Market Street Tunnel (including portals). This recently vacated West Portal OCC remains the current back-up facility for the TMC. Many servers and associated hardware remain at this location and are fully operational. Most signaling and some other system functionality currently provided at the TMC originate from hardware and software at the West Portal OCC. They are displayed on remote terminals via a SFMTA fiber network, although some systems are housed at the TMC as well. The signaling system servers, which provide the current signaling system front end at the TMC, are primarily based at the former West Portal OCC.

The Project will continue this relationship – the TMC will continue to be the primary rail control center, and the OCC will be the backup in cold standby. When not in use as a control center, the OCC will be used as an operations training facility so that the train controllers can practice on the same equipment they will be using in revenue service.

## **3. The Train Control Upgrade Project**

The Train Control Upgrade Project (TCUP) is a capital project intended to deliver a modern communications-based train control (CBTC) System covering both the surface portions of the Muni Metro network and the subways. As part of TCUP, the SFMTA will be entering into a contract with a CBTC Supplier for an 8-year delivery period and an initial 10-year support period, with two options to extend support for 5 years each.

The existing ATCS in the Market Street subway and the Central Subway is the Seltrac IS product provided by Thales. The Project will replace the ATCS with the CBTC System procured from the selected CBTC Supplier.

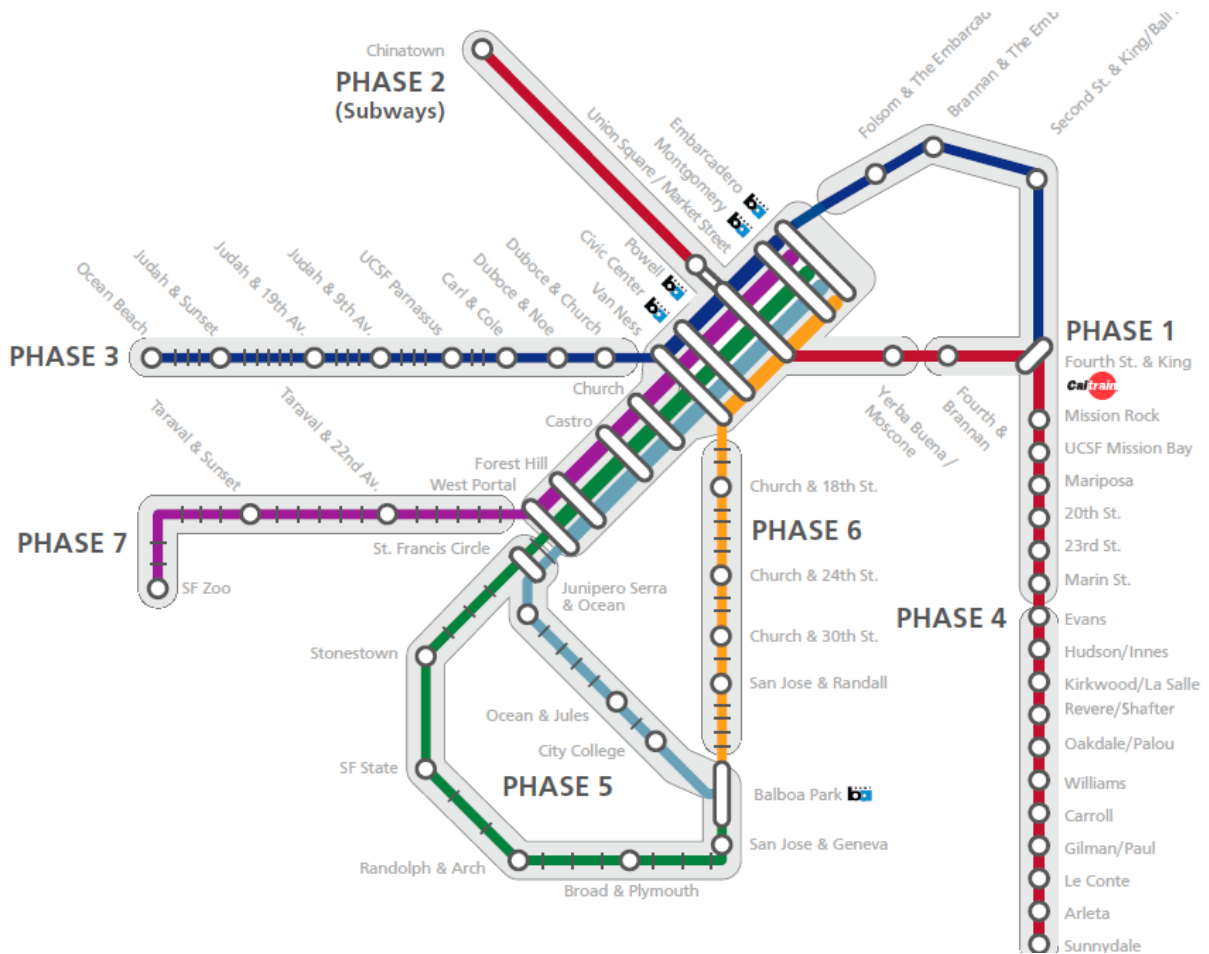
The Project objectives are:

- Increase the capacity of the system from its average of 35-38 trains per hour;
- Maintain the high standards of safety provided by the existing ATCS;
- Extend safety protections to surface operations;
- Enable shorter, more consistent travel times and headways; provide a reliable system that supports Muni Metro service at all times it is running;
- Support service changes and contingency operations through a configurable, flexible design;
- Update regularly to include the latest service-proven components and software.

The Project will be delivered in geographic phases, as shown in Figure 2. In the first five years, the Project will introduce the new CBTC System on the street-level Embarcadero and Third Street corridors, which serves major civic destinations such as Oracle Park, Chase Center, and UCSF Mission Bay, as a pilot. In the second phase, the Project will replace the existing ATCS in the Market Street Subway and Central Subway by overlaying the same CBTC System so that Muni Metro train control is provided by a single CBTC System. Over the full eight-year span of the Project, CBTC will be extended to the surface branches of the J, K, L, M, N and T lines.

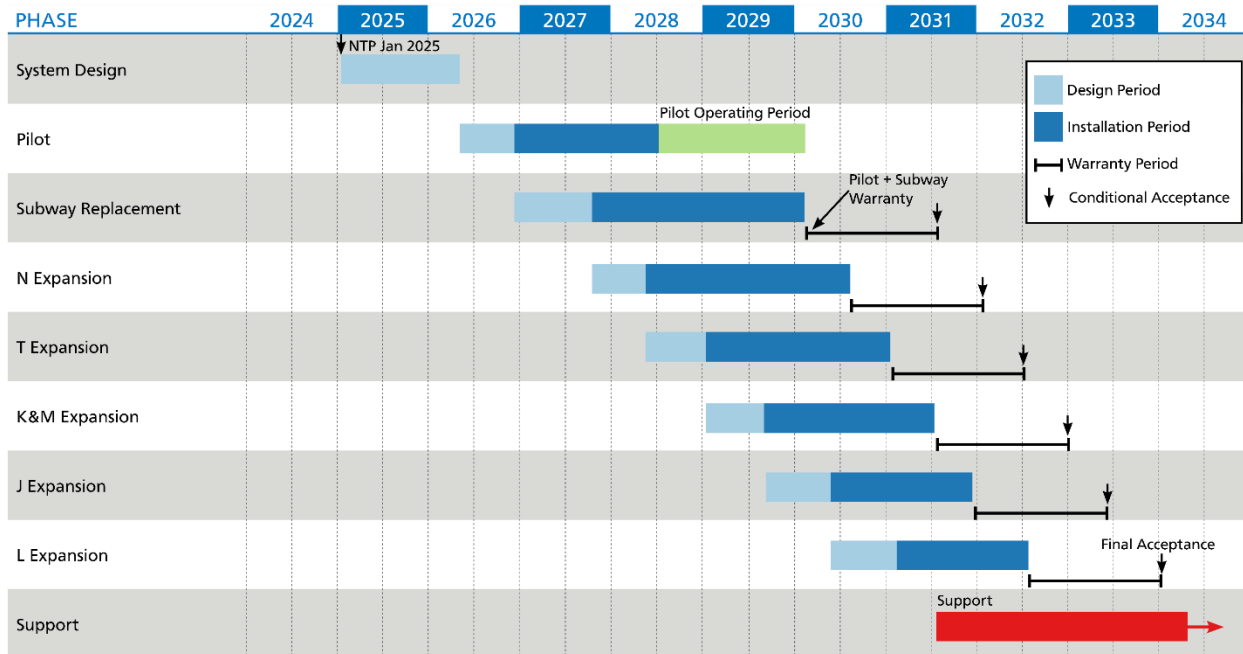


**Figure 2: TCUP Phasing**



An overview timeline of the anticipated Project schedule is shown in Figure 3. The Project is currently in the Planning and Project Development phase, which will end in mid-2024 when the SFMTA is projected to award the contract and issue the notice to proceed to the CBTC Supplier. Once the Supplier is under contract, the Project will enter the System Design Phase of the Project and progress designs to 65%. Following the completion of a System Final Design, the SFMTA and its Supplier will enter a continuous detail design of each Project segment, phase by phase. Once Phase 1 Design has been completed, Phase 2 Design and Phase 1 Construction will start, and so on, as each of the phases is designed to 100%. To improve the pace of Project delivery, the SFMTA assumes that the subway installation can take place concurrently with the installation of wayside equipment on the surface to allow phases to be stacked. The installation of central control equipment and on-board vehicle equipment will take place concurrently with Phases 1 and 2.

**Figure 3: Project Estimated Schedule**



The Consultant will work with SFMTA as an integrated project team to support all aspects of the project from NTP through Final Acceptance of the CBTC System, including the beginning of long-term system support.

## B. Selection Overview

The SFMTA may award a contract to the Proposer that meets the Minimum Qualifications (see Section III) of this RFP and whose Proposal receives the highest-ranking score.

Proposers must provide documentation that clearly demonstrates that each Minimum Qualification has been met, and that the proposal is responsive to SBE/DBE Program requirements. **Any Proposal that does not meet the Minimum Qualifications or SBE/DBE Program requirements will be deemed non-responsive.**

SFMTA staff will review each Proposal for initial determinations on responsiveness. Elements reviewed will include, without limitation: Proposal completeness, compliance with format requirements, compliance with Minimum Qualification requirements, and compliance with Small Business Enterprise (SBE)/Disadvantaged Business Enterprise (DBE) requirements. Responsive Proposals will then be evaluated by a panel (Evaluation Panel) consisting of parties with expertise related to the goods and/or services being procured through this RFP. The Evaluation Panel may include staff from various City departments. Proposals will be evaluated based on the criteria outlined herein. The scores will then be tabulated, and Proposers will be

ranked starting with the Proposer receiving the highest score, then continuing with the Proposer receiving the second highest score, and so on.

**C. Anticipated Contract Term**

A contract awarded pursuant to this RFP shall be non-exclusive with an original term of five years. The SFMTA at its sole, absolute discretion, shall have five options to extend the term for an additional year, for a total of ten years.

**D. Anticipated Contract Not-to-Exceed Amount**

A contract awarded pursuant to this RFP shall have a not-to-exceed (NTE) amount of \$25,000,000 for the initial term. The NTE amount will increase by \$2,200,000 for each annual extension that the SFMTA exercises after the initial term.

**E. Indefinite Quantity, As-Needed Contract**

A contract awarded pursuant to this RFP will result in a contract with a fixed term. In the case of services, this will be referred to as an “as-needed” contract. There is no guarantee of a minimum amount of goods or services for any of the Proposers selected for contract negotiations or for the awarded Proposer(s). Unless otherwise specified herein, deliveries and services will be required in quantities and at times as ordered during the period of the contract. Estimated quantities, if any, stated in this RFP are approximations only. The SFMTA, in its sole discretion, may purchase any greater or lesser quantity. The SFMTA may also make purchases of items awarded pursuant to this RFP from other suppliers when the SFMTA determines, in its sole discretion, that it is in the best interest of the SFMTA to do so.

**F. Reserved (Cooperative Agreement)**

**G. RFP Schedule**

The anticipated schedule for this RFP is set forth below. These dates are tentative and subject to change. It is the responsibility of the Proposer to check for any Addenda to this RFP or other pertinent information posted in the City’s Supplier Portal.

<u>Phase</u>	<u>Date</u>
RFP is issued by the SFMTA:	November 14, 2023
Pre-Proposal Conference:	December 14, 2023, 10:00 AM PT
Deadline for submission of written questions or requests for clarification:	January 15, 2024, 2:00 PM PT
Proposals due:	February 12, 2024, 2:00 PM PT

<b><u>Phase</u></b>	<b><u>Tentative Date(s)</u></b>
Oral interviews of short-listed firms*:	April 22, 2024
Contract Negotiations:	May 31, 2024
SFMTA Board meeting approval:	August 30, 2024
Contract Starts:	October 11, 2024

\*The SFMTA reserves the right not to conduct oral interviews and select a firm based on the written Proposals only.

## **H. City’s Social Policy Requirements**

### **1. Proposers Unable to do Business with the City**

Proposers that do not comply with laws set forth in San Francisco’s Municipal Codes may be unable to enter into a contract with the City. Laws applicable to this RFP are set forth below and Appendix B, Sample Agreement for Professional Services.

### **2. Other Social Policy Provisions**

The Sample Agreement for Professional Services (Appendix B), identifies the City’s applicable social policy provisions related to a contract awarded pursuant to this RFP. Proposers are encouraged to carefully review these terms and ensure they are able to comply with them.

## **I. City Supplier Registration**

Contractors must become an “Approved Supplier” in order to enter into an Agreement with the City or SFMTA. Approved Suppliers are entities that have met all the compliance requirements necessary to conduct business with the City, such as business tax registration and Chapter 12B compliance.

The following requirements pertain only to Proposers not currently registered with the City as a Supplier.

**Step 1:** Register as a BIDDER at City’s Supplier Portal:

<https://sfcitypartner.sfgov.org/pages/index.aspx>

**Step 2:** Follow instructions for converting your BIDDER ID to a SUPPLIER ID. This will require you to register with the City Tax Collector’s Office and submit Chapter 12B and 12C forms through the Supplier portal. Once these forms have been completed, submitted, and processed, you will be notified via email with your organization's new Supplier ID. That email will also provide instructions for completing your Supplier registration.

**San Francisco Municipal Transportation Agency**

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- **City Business Tax Registration Inquiries:** For questions regarding business tax registration procedures and requirements, contact the Tax Collector's Office at (415) 554-4400 or, if calling from within the City and County of San Francisco, 311.
- **Chapter 12B and 12C Inquiries:** For questions concerning the City's Chapter 12B and 12C Equal Benefits and Non-Discrimination in Contracting requirements, go to: [www.sfgov.org/cmd](http://www.sfgov.org/cmd).

## **II. Scope of Work**

Please refer to the Scope of Services contained as part of the Sample Agreement (Appendix B to this RFP).

**III. Minimum Qualifications**

The Minimum Qualifications (MQs) set forth below are required for a Proposer to be eligible to submit a Proposal in response to this RFP.

Proposers must provide documentation that clearly demonstrates each MQ listed below has been met. Minimum Qualification documentation should be clearly marked as “MQ1”, MQ2”, and so on, to indicate which MQ it supports.

Each Proposal will be reviewed for initial determination on whether Proposer meets the MQs referenced in this section. **This screening is a pass or fail determination and a Proposal that fails to meet the Minimum Qualifications will not be eligible for further consideration in the evaluation process.**

The SFMTA reserves the right to request clarifications from Proposers prior to rejecting a Proposal for failure to meet the MQs. Clarifications are limited exchanges between the SFMTA and the Proposer for the purpose of clarifying certain aspects of the Proposal and will not provide a Proposer the opportunity to revise or modify its Proposal.

MQ #	Description
<b>MQ1</b>	<p>Evidence that Proposer has 10 years of experience working on CBTC projects.</p> <p>Include the form provided in Appendix I and supporting information that Proposer has the requisite experience to meet this MQ. Supporting information may include contract award notices or other documentation from the sponsoring transit agency that demonstrates the Proposer meets MQ1.</p>
<b>MQ2</b>	<p>Evidence that the Proposer has consulted on a minimum of three completed or ongoing CBTC projects within the last three years, including at least one project where a CBTC was installed on an already-operating railway (“brownfield”).</p> <p>Include the form provided in Appendix I and supporting information that Proposer has the requisite experience to meet this MQ. Supporting information may include contract award notices or other documentation from the sponsoring transit agency that demonstrates the Proposer meets MQ2.</p>
<b>MQ3</b>	<p>Evidence that the Proposer’s Project Manager and Specialist Team Leaders have the following experience:</p> <ul style="list-style-type: none"> <li>a. <b>Project Manager.</b> 10 years of CBTC project management experience.</li> <li>b. <b>Lead Engineer.</b> 10 years of experience in engineering on CBTC projects.</li> <li>c. <b>Lead Vehicle Engineer.</b> 10 years of experience in vehicle engineering, testing and onboard systems integration for light rail</li> </ul>

	<p>vehicles, including a minimum of 5 years' experience working with train control projects.</p> <ul style="list-style-type: none"><li>d. <b>Construction Manager.</b> 10 years of experience in construction management, including field supervision, schedule &amp; resource management, and construction engineering, including a minimum of 5 years' experience working with train control projects.</li><li>e. <b>Quality Assurance Lead.</b> 10 years of experience in quality assurance for transit vehicles or train control systems, including compliance with required quality standards, audits, inspections and oversight of field modifications.</li><li>f. <b>Testing and Commissioning Lead.</b> 10 years of experience in testing of CBTC systems.</li><li>g. <b>Safety Lead.</b> 10 years of experience in all aspects of CBTC safety programs, including preparing hazard analyses, threat/vulnerability analyses and leading safety reviews.</li><li>h. <b>Service and Operations Planning Lead.</b> 10 years of experience in rail operations, including at least 5 years of experience managing operations at a CBTC-equipped railroad.</li></ul> <p>Include the form provided in Appendix I and supporting information for each of the personnel listed in this section that demonstrates the Proposer meets MQ3. The SFMTA will compare the statements made in the form to the resumes submitted in response to Section IV.C.6 below to evaluate whether this MQ has been met.</p>
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Any Proposal that does not demonstrate that the Proposer meets these MQs by the deadline for submittal of Proposals may be deemed non-responsive.



## IV. Submission Requirements

### A. Time and Place for Submission of Proposals

Proposals must be received by 2:00 PM PT on February 12, 2024. Proposers must submit their Proposals in an electronic format by email to [Kathy.Larson@sfmta.com](mailto:Kathy.Larson@sfmta.com).

Proposers shall limit email messages to 25MB or less.

Proposers may break up their Proposals into separate electronic files and submit these in separate emails. Per Section IV.B, each electronic file shall be clearly marked “SFMTA-2024-20-FTA” and, as applicable, “Part 1 – Written Proposal,” “Part 2 – Appendix A Forms,” and “Part 3 –Cost Proposal.”

Proposers are fully responsible for ensuring their Proposals are received by the time and date indicated. The SFMTA will not accept late Proposals, even in cases of known email system failure. Accordingly, Proposers are encouraged to submit their Proposals at least 24 hours before the time and date due.

### B. Proposal Content and Format

Firms interested in responding to this RFP must submit Proposals, in the order and format specified in this Section IV.B. The content of all Proposals must consist of the information specified below, in the order outlined below, in order to be deemed responsive.

Proposer shall ensure that the document is legible and may be easily viewed on a computer monitor, laptop, or (electronic) tablet. The SFMTA prefers that text be unjustified (i.e., with a ragged-right margin), and that you use an 11-point or larger serif font (e.g., Times New Roman, and not Arial). Pages must have margins of at least 1” on all sides (excluding headers and footers).

Proposals shall be submitted in [#] separate electronic files, as listed below. Each electronic file shall be clearly marked “SFMTA-2024-20-FTA” and, as applicable, “Proposal Part 1,” “Proposal Part 2,” and “Proposal Part 3”.

- Part 1 – One electronic copy of the Written Proposal, including completed and signed Appendices C, D, E and I (Submit Appendices A, B (Optional), and F as separate files, as stated below.)
- Part 2 – One electronic copy of the completed and signed Appendix A forms (see Section IX.Q and Appendix A) as a separate file on your electronic media submission.
- Part 3 – One electronic copy of the completed Appendix F (Cost Proposal form) as a separate file on the electronic media submission.
- Part 4 (City Terms and Conditions)– Proposers wishing to negotiate modification of terms and conditions must attach a copy of the SFMTA’s Appendix B Sample Agreement for Professional Services referring to the specific portion of the Agreement

to be changed and show the proposed changes in “Track Changes” mode, consistent with the requirements of Section IV.E below.

All electronic files must include scanned (PDF) copies of any documents that require signature. Signatures must be by an official with your firm who is authorized to submit a Proposal on behalf of your firm. Your electronic media shall be clearly marked that it is for “SFMTA-2024-20-FTA.”

### **C. Part 1 – Written Proposal**

Firms interested in responding to this RFP must submit Written Proposals that include the information requested in this Section IV.C, in the order specified herein. Written Proposals must include a table of contents showing the applicable section headings and sub-headings, section numbering, and page numbers. Page limitations, if any, are indicated below in parentheses next to the corresponding section headings.

It is imperative that the Proposal follow the format as listed below. All sections must be separated by a labeled cover page. Cover pages do not count against the page limits indicated below.

#### **1. Introduction and Executive Summary (up to 4 pages)**

Submit a letter of introduction with an executive summary of the Proposal. The letter must confirm that the Proposer is willing and able to perform the work described in the RFP and must be signed by an authorized representative of the Proposer.

- a. Proposer Contact. Name, address, telephone number, and email address of Proposer’s contact person for this proposal.
- b. Project Manager. Identify an overall project manager who will serve as the primary contact with the SFMTA.
- c. Confirmation that Proposer is willing and able to perform the work described in the RFP and will meet the SBE/DBE requirements.

#### **2. Certification of Supplier Information (up to 1 page)**

Proposals should contain one of the two following statements:

##### **Supplier Information**

“My company is currently a City and County of San Francisco Supplier, and the City and County of San Francisco Supplier Number is: \_\_\_\_\_.”

Or

“My company is currently not a City and County of San Francisco Supplier but will register to become one.”

### **3. Minimum Qualifications Documentation (up to 30 pages)**

Include the forms provided in Appendix I and supporting documentation that clearly demonstrates that each Minimum Qualification (MQ) listed in Section III (Minimum Qualifications) has been met. Minimum Qualification documentation should be clearly marked as “MQ1”, MQ2”, and so forth., to indicate which MQ it supports.

### **4. Project Team Organization (up to 15 pages)**

Describe the organization of the team that the Proposer will employ to provide services to the SFMTA. Include the following information:

- a. Briefly describe the Proposer firm, joint venture, or association and the recognized area(s) of expertise. Describe in detail the functions/roles/responsibilities and the services it will undertake under this RFP. If the Proposer is a joint venture or association, describe each member firm in detail.
  - i. For a joint venture or association, provide a description of the joint venture and contractual arrangement (i.e., identify the general partner, if any, division of liability and administrative responsibilities). Indicate any past joint venture relationships between the joint venture partners and the projects with which they were involved.
  - ii. For a joint venture or association, provide the name(s), title(s), address(es), including email address(es), telephone and facsimile numbers of individual(s) who have authority to bind the firm, joint venture, or association.
  - iii. Identify one individual, empowered by the Proposer and representing the Proposer’s entire team, as the Project Manager, who for this Contract will have the authority to make binding decisions and commitments for the Proposer, who will serve as the single official point of contact with the SFMTA on all matters relating to the Contract, who is responsible for managing the Proposer’s team, regardless of the authority of the other member firms (in case of joint venture or association) or authority of other key personnel, and who has the expertise to manage the work defined herein. The Project Manager must have sole signature authority to execute all task orders. Alternatively, identify which individuals have the authority to execute all task orders, and provide their contact information and their association with the Project Manager.
  - iv. Identify one individual, empowered by the Proposer and representing the entire consulting team, as the Principal in Charge, whose responsibility is to manage the entire consulting team, regardless of the other key personnel provided.

- v. Provide a table listing the following information for all firms included in a Proposal, including the Proposer (or all member firms for joint venture/association) and all prospective subconsultants:
    - (1) Official name and address of the firm (full address, including zip codes)
    - (2) Date that the firm was formed under its present name
    - (3) Name(s) of the owner, CEO and President, as applicable
    - (4) Number of offices, in US and worldwide
    - (5) Number of employees: number of employees in the branch office closest to San Francisco and total number of employees overall
    - (6) Indicate whether the firm is an SBE (or DBE) or a non-SBE
  - vi. Briefly describe each prospective subconsultant, including its recognized area(s) of expertise. Describe in detail the functions/roles/responsibilities and the services that each subconsultant will undertake under this RFP.
  - vii. In addition to a written description, include an organizational chart(s) in the body of the Proposal to show the proposed organization and relationships of the Proposer's team.
  - viii. Describe the proposed team's experience working with one another, including previous partnerships between the Proposer and its subconsultants, and the any previous collaborations between the individual team members. Include in the description whether this team or a subset of it have worked together before.
- b. Describe in detail the proposed management approach, methods and tools to manage team staffing and tasks so as to consistently provide quality, cost-effective and timely services, including how the Proposer will manage its team to meet the goals and milestones outlined in the task orders.
  - c. Cite examples of the success of Proposer's organizational and management approach, including lessons learned related to quality, cost and schedule from recent past projects.

**5. Firm Qualifications / References (up to 20 pages)**

- a. Describe the qualifications and experience of each firm and subconsultant firm in delivering work of a similar nature under a comparable as-needed contract. Describe relevant experience, qualifications, and major or unusual accomplishments for each firm, including their recognized area(s) of expertise.
- b. Describe any experience that the firms or personnel have in working in projects similar to the Project described in this RFP, including Appendix J (Reference

Materials). Specifically describe Proposer's experience as part of a mixed team of Client-Consultant engineering personnel.

- c. Describe the Proposer's familiarity with FTA procurement standards and procedures.
- d. Describe the Proposer's familiarity with CBTC system procurements, and the services provided by the proposer to other transit agencies for similar projects, including experience in introducing a new train control system into an existing system infrastructure.
- e. In a spreadsheet format as an appendix to the Proposal, provide a minimum of three client references from different transit agencies for each firm, including a contact person, his/her title, address, phone number and e-mail address, starting with the most recent projects undertaken by each firm.

**6. Team Member Qualifications (up to 40 pages)**

- a. Provide a matrix (11"x17" maximum size paper) detailing the names of all individuals Proposer plans to work on this Contract; list their role, current employers, a summary of their qualifications, their years of experience, their location and relevant projects worked on over the past five years, their availability, their present job assignment(s) and the team(s) they will be assigned to under this Contract.
- b. **Special Experience Requirements.** Proposer shall demonstrate its ability to provide qualified staff in each of the specialized areas of expertise as described below.
  - i. **Project Manager.** Provide a list and description of projects that the proposed Project Manager has successfully managed.
  - ii. **Project & Contract Management.** Describe, with examples, the proposed team members' experience with providing capital Project support, which includes planning, design, review, and field investigation support of transit infrastructure and systems improvements projects, including transit signaling system and communications system projects to improve safety and service reliability.
  - iii. **Train Control Systems Engineering.** Describe your team members' experience with train control system design and engineering. Describe the experience of the lead engineer and other individuals who will be providing the train control system expertise to this Project. Examples should focus on introducing a new train control system into an existing system infrastructure on an operational railway.
  - iv. **Light Rail Vehicle Engineering.** Describe the experience of the lead vehicle engineer and other engineers, demonstrating expertise in light rail vehicle engineering, rehabilitation, and specific train control systems integration.

- v. **Construction Management.** Describe, with examples, the proposed team members' experience in providing construction management support, which includes field supervision of transit infrastructure and systems improvement projects, schedule and resource management, and construction engineering. Examples should focus on installing a new train control system into an operational rail system.
- vi. **3<sup>rd</sup> Party Systems Integration.** Describe, with examples, the proposed team members' experience in system integration. Examples should focus on introducing a new train control system into an existing system infrastructure and demonstrating experience in assuring proper systems integration across the entire system.
- vii. **QA/QC Experience.** Discuss the proposed team members' experience in providing quality assurance and quality control oversight for train control projects. The proposal should highlight the lead QA Representative, as well as other staff with in-depth experience in all aspects of quality assurance, including compliance with required quality standards, audits, inspections, and oversight of field modifications.
- viii. **Reliability, Maintainability, Safety and Human Factors (RMSH)**  
Provide examples of the proposed team members' experience in supporting RMSH programs, including analysis, testing, and compliance aspects of the program.
- ix. **Test Witnessing.** Fully describe the qualifications and the experience of team members who have the expertise to support the SFMTA in witnessing all types of CBTC tests, including static and dynamic qualification tests, as well as routine acceptance tests.
- x. **Cost Analyses.** Describe, with examples, the proposed team members' experience performing cost and price analyses of change orders, and contract modifications in accordance with FTA requirements; change order estimating and negotiation; schedule and delay analysis; and dispute analysis and review.
- xi. **Safety & Security.** Describe, with examples, the proposed team members' experience supporting Project safety and security certification plans, including preparing/reviewing hazard analyses, threat/vulnerability analyses, and leading safety reviews for train control projects.
- xii. **Service and Operations Planning.** Describe, with examples, the proposed team members' experience producing operational scenario models, support long-term rail service planning, and prepare SOPs, concepts of operations, and operations plans.

- xiii. **Other Services.** Describe, with examples, the proposed team members' experience providing as-needed specialty expertise to address other services described in Section 1.L of the Scope of Services contained in the Sample Agreement.
- c. **Core Project Team.** The Core Project Team shall be responsible for delivery of the Project Management scope described in Section 1.A of the Scope of Services contained in the Sample Agreement, as well as other tasks described in Section II as requested by SFMTA. Unlike the Specialist Teams, the Proposer's Core Project Team will be expected to be engaged in work on this Contract for at least 75% of their time for the entire term of the Contract. The Core Project Team should therefore be composed only of staff whose skills will be used in all phases of the Project. The Project Manager shall be included in the Core Project Team. Under the awarded Contract, the Consultant shall not reassign Core Project Team members without the express written approval of the SFMTA. See Appendix B, Section 4.4.2 (Key Personnel).

Core Project Team members shall be identified by name in the proposal and the Proposer shall provide resumes of all Core Project Team members which demonstrate their suitability for the Core Project Team. Resumes submitted as part of a Proposal must adhere to the format described below:

- i. Resumes must first identify Relevant Experience, starting with the most recent, including at a minimum titles/positions held, dates employed, names of companies, names of supervisors/managers with phone numbers, and types and size (including dollar value) of projects worked on with specific roles/responsibilities.
  - ii. Resumes must also list education and training received (e.g., degree earned, name of school).
  - iii. Resumes must also list any other pertinent credentials, including licenses (type, state registered, and date acquired).
  - iv. Resumes for Key Personnel shall be limited to a maximum of two pages each.
  - v. Resumes must list the individuals' proposed roles for the services included in the Proposal and their base location.
- d. **Specialist Teams.** The SFMTA will issue task orders which will be broken down by the categories of services described in the Scope of Services contained in Appendix B, and the Consultant may employ teams of specialists in each particular category to deliver these services. These Specialist Teams will be used as they are needed and are not assigned a specific number of hours in the Contract. Specialist Team Members

therefore do not need to be dedicated to the Project. Under the awarded Contract, if an employee who has been requested in a task order and identified in the Proposal as one of the Specialist Team Leads is unavailable, the Consultant will have to obtain authorization from the SFMTA to substitute another employee. See Appendix B, Section 4.4.2 (Key Personnel).

Provide resumes of Consultant's team members who will be assigned to manage/lead the team responsible for delivering each category of service listed in the Scope of Services contained in Appendix B. The Proposal must include resumes for the following Specialist Team Lead roles:

- 1) Contract Management Lead
- 2) Construction Manager
- 3) Lead Engineer
- 4) Lead Vehicle Engineer
- 5) System Integration Lead
- 6) Quality Assurance Lead
- 7) Testing and Commissioning Lead
- 8) Safety Lead
- 9) Security Lead
- 10) Post-Delivery, Maintenance and Support Lead
- 11) Service and Operations Planning Lead

Proposers may combine or split these roles as necessary but shall ensure all categories of service listed in the Scope of Services contained in Appendix B are covered. Proposer may also designate members of the Core Project Team to fill any of these roles – if doing so the Proposer shall indicate on the Core Project Team member's resume which Specialist Team Lead roles they are filling. The roles shall match the positions included in Proposer's organizational chart (See Section IV.C.4.a.vii). All resumes must adhere to the format described below:

- i. Resumes shall be limited to a maximum of two pages each.
- ii. Resumes must first identify Relevant Experience, starting with the most recent, including at a minimum titles/positions held, dates employed, names of companies, names of supervisors/managers with phone numbers, and types and size (including dollar value) of projects worked on with specific roles/responsibilities.
- iii. Resumes must also list education and training received (e.g., degree earned, name of school).
- iv. Resumes must also list any other pertinent credentials, including licenses (type, state registered, and date acquired).



- v. Resumes shall include the individual's base location.
- vi. Resumes shall indicate which role/position the individual will fill on Proposer's team.

**7. Project Approach (up to 50 pages)**

Describe the services and activities that the Proposer will provide to the SFMTA. The items outlined in the Scope of Services contained in Appendix B present the SFMTA's general description of the work. At a minimum, the Project Approach section of the Proposal shall describe the following:

- a. The Proposer's understanding of the nature and extent of the services defined in the Scope of Services contained in Appendix B.
- b. The Proposer's plan, program, and methods for delivering the services defined in the Scope of Services contained in Appendix B. Explain the depth of resources of the proposed Consultant and each Subconsultant with respect to the services the team proposes to provide. Include Proposer's approach for monitoring expended labor hours and tracking various factors affecting costs. Include description (frequency, days after timesheet submittal) of project manager's access to reports on staff labors hours and other cost items. Describe how the Proposer will be able to flex its team to respond to the needs of the Project and the SFMTA, which will vary over the course of the Project.
- c. The Proposer's plans for communicating with the SFMTA Project team, management, executives and stakeholders, as well as the CBTC Supplier, Installer, the LRV4 Manufacturer, or any of the SFMTA's vendors.
- d. The Proposer's quality control/quality assurance program for all deliverables which are part of the Scope of Services contained in Appendix B. Provide a copy of the current corporate organization chart depicting the reporting relationship of those responsible for quality assurance and quality control in the firm.
- e. The Proposer's recommended design, engineering, and operational approach, and the Proposer's experience on which the recommended approach is based, for handling the following scenarios:
  - i. Designing a CBTC system that transitions trains between automatic train operation (ATO) in an exclusive right of way (subway) environment and automatic train supervision (ATS) under manual driving in mixed right-of-way shared with general traffic.
  - ii. Managing the installation of a CBTC system on a railway operating in

revenue service; specifically addressing the issues related to managing track access for installation and testing with operational and maintenance demands on the right of way.

- iii. During system transition, ensuring rail service can be maintained while the service area is divided into territory controlled by two separate train control systems from two different vendors.
- iv. Conducting the replacement of a loop-cable based CBTC system with a wireless CBTC system; and managing the cutover from the old system to the new.
- v. Integrating a CBTC system with traffic signals to obtain transit signal priority for the trains.
- vi. Installing CBTC equipment on non-revenue or historic vehicles such that they can be detected and interact with the system on a limited basis.

For each of these items, the Consultant's description of its recommended approach shall include what factors should the Agency consider as part of that recommendation, what data would aid in decision-making and understanding, and what experience the Consultant has in similar situations from other clients.

**D. Part 2 – SFMTA Small Business/Disadvantaged Business Enterprise Program for Professional and Technical Services**

Submit completed and signed forms listed in RFP Appendix A, "SFMTA SBE/DBE Requirements for Architects, Engineers, Planners, Environmental Scientists and Other Professional Services Contracts," to document compliance with the SBE/DBE requirements described in Section IX.Q of this RFP.

**E. Part 3 – Cost Proposal**

The SFMTA intends to award this contract to the firm that it determines will be the most qualified to provide the services to the Agency. The Cost Proposal will be the basis for contract negotiations with the selected Proposer. The Cost Proposal will also be the basis for negotiating pricing for individual task orders.

Submit the following information in the Cost Proposal:

1. Direct and Fully Burdened Hourly Labor Rates by Positions for Consultant and all Subconsultants (Table 1 in Appendix F). For all Consultant and subconsultant personnel proposed, provide name of firm; name of individual; position/job classification or type of work individual will perform; education and experience; direct hourly labor rate; fully burdened hourly labor rates (sum of unburdened direct hourly labor rate and overhead rate, as applicable);

2. Schedule of Overhead Rates for Consultant and all Subconsultants (Table 2a in Appendix F). Include audited overhead percentages. Multipliers can be calculated by:  $((\text{Overhead \%}/1)+1)$ ;
3. Profit and Markup for Consultant and all Subconsultants (Table 2b in Appendix F). Provide proposing firm's name, proposing firm's recommended profit expressed as a not-to-exceed percentage (%) and markup for all subconsultants expressed as a percentage (%); and

For fair comparison purposes, all billing rates will reflect 2024 billing rates. During the term of the Agreement, Consultant will be allowed to escalate their 2024 billing rates as described in Appendix B, Section 3.3.2 (Method of Computing Compensation).

The SFMTA intends to award one contract to provide the Services described in this RFP. The SFMTA will select the Consultant for award based on the firm that it determines will provide the best overall program services to the Agency. The SFMTA may request additional clarification on billing rates or a breakdown of the hours and costs from the highest-ranked Proposer(s). The SFMTA reserves the right to accept other than the lowest-priced offer, and to reject any Proposal that is non-responsive to this RFP.

### **1. Price Discrepancies**

Where applicable, if there is a discrepancy between the Cost Proposal and other pricing provided by Proposer, the Cost Proposal pricing will prevail. In the event of a discrepancy between the unit price and the extended price, the unit price will prevail.

### **2. Price Lists**

If a Cost Proposal is based on prices from a catalog or price list, Proposer shall furnish copies of the catalog or price list in electronic format. Proposer shall furnish additional price lists as required. Proposer's pricing narrative, including any proposed price list discounts or markups, must remain firm during the term of the contract.

## **F. Part 4 – City Terms and Conditions**

Proposer must acknowledge that it is willing and able to meet all of the SFMTA's proposed terms and conditions as outlined in Appendix B, Sample Agreement for Professional Services.

If the Proposer is unable to accept SFMTA's terms and conditions substantially in the form presented in the SFMTA's proposed Sample Agreement (Appendix B), the Proposer shall include a revised copy of the Proposed Agreement with its Proposal. The revised copy of the Proposed Agreement must clearly:

1. Mark those sections to which it objects;
2. Set forth Proposer's alternative terms with respect to each such section; and
3. Explain the basis for each proposed change.

**San Francisco Municipal Transportation Agency**

RFP for Consulting Services Supporting the Communications-Based Train Control Upgrade Project

The revised copy of the Proposed Agreement must be submitted to the SFMTA in MS Word format, and must show proposed changes in “Track Changes” mode. The SFMTA’s selection of any Proposer who proposes changes to the SFMTA’s Agreement terms shall not be deemed as acceptance of the Proposer’s proposed changes.

The SFMTA will evaluate Proposals based on the Submission Requirements and City Terms and Conditions without taking into account Proposer’s proposed changes.

With regard to the Cost Proposal, Proposers should submit a Cost Proposal which assumes that the SFMTA has not accepted Proposer’s proposed changes. If the Proposer’s proposed changes to the City Terms and Conditions, if accepted, would affect the submitted Cost Proposal, the Proposer should clearly indicate the potential price discrepancies that may occur as a result of acceptance of the Proposer’s changes to the City’s Terms and Conditions.

**V. Evaluation and Selection Criteria**

**A. Initial Screening**

The SFMTA staff will review each Proposal for initial determinations on responsiveness. Elements reviewed will include, without limitation: Proposal completeness, compliance with format requirements, compliance with Minimum Qualification requirements, verifiable references, compliance with SBE/DBE requirements, and responsiveness to the material terms and conditions in [Appendix B, Sample Agreement for Professional Services](#).

The SFMTA will not score Proposals during the Initial Review. This review will provide a pass/fail determination as to whether a Proposal meets the threshold requirements described above. The SFMTA will deem non-responsive any proposal that fails to meet these requirements. The SFMTA will not include any Proposal deemed non-responsive in the Evaluation Process described in Section V.B. below.

The SFMTA reserves the right to request clarifications from Proposers prior to rejecting a Proposal for failure to meet the Minimum Qualifications. Clarifications are limited exchanges between the SFMTA and the Proposer for the purpose of clarifying certain aspects of the Proposal and will not provide a Proposer the opportunity to revise or modify its Proposal.

**B. Overall Evaluation Process**

The evaluation process will consist of the phases specified below with the following allocation of points:

<b>Evaluation Phase</b>	<b>Maximum Points</b>
Minimum Qualifications Documentation	Pass/Fail
Completeness and Organization of Proposal Submission	5
Project Organization	5
Firm Qualifications	15
Team Member Qualifications	35
Project Approach	20
Oral Interview (if conducted)	20
<b>TOTAL</b>	<b>100</b>

## C. Selection Criteria

An Evaluation Committee comprised of parties with expertise in **rail operations, rail vehicle and wayside maintenance, train control, technology and project delivery** will evaluate Proposals, using the criteria described below.

### 1. Completeness and Organization of Proposal Submission (5 points)

- a. Proposal conforms with the RFP submission requirements and concisely but comprehensively addresses RFP requirements in the order presented in Section IV. (Submission Requirements).
- b. The Proposal is professionally presented and organized.

### 2. Project Team Organization (5 points)

- a. How well the Proposer's organization, as described in the Proposal, is structured to deliver on the Scope of Services contained in Appendix B and how well the Proposer's organization fits with the Project organization described in Appendix J (Reference Materials). The extent to which this description clearly outlines the roles and responsibilities of the Proposer's team, as well as any subcontractors or partners.
- b. The quality of the proposed organization and management approach, including how well the methods and tools used to manage design team staffing and tasks will support the delivery of the Scope of Services contained in Appendix B.
- c. How successful has the Proposer's organization and management approach worked with other clients, based on the provided examples from Proposer's participation in recent past projects, and how well those examples reveal lessons learned related to quality, cost, and schedule.

### 3. Firm Qualifications (15 points)

- a. How well the Proposal provides evidence that the Proposer can deliver timely, qualified and adequate staffing and services to support Project demands, especially personnel with the expertise related to the proposed Scope of Work, based on Proposer's participation on past projects.
- b. How experienced the Proposer is with the types of projects similar to the Project described in this RFP. The extent to which projects or service assignments used as evidence to support this criterion are of similar size, scope and staff demand to the SFMTA's project. How well the showcased projects demonstrate successful outcomes delivered by Proposer, including adherence to scope, schedule, deadlines and budgets.
- c. How experienced the Proposer is with FTA's procurement standards, procedures and organization.

- d. How experienced the Proposer is with CBTC procurements, specifically the challenges of introducing a new CBTC system into an operating railway. How well the showcased projects demonstrate successful outcomes delivered by Proposer, including adherence to scope, schedule, deadlines and budgets.
- e. The extent to which the references provided by Proposer confirm the information provided in the Proposal that the showcased projects demonstrate successful outcomes delivered by Proposer, including adherence to scope, schedule, deadlines and budgets. The SFMTA will give more weight to client references from public transit agencies, government agencies, or large transportation enterprises with which the firm has contracted within the past five years.

**4. Team Member Qualifications (35 points)**

- a. How well the information provided in the Proposal matrix demonstrates that the Proposer has sufficient depth of resources on its team, including its subconsultant(s), to deliver the Scope of Services contained in Appendix B in a timely and cost-effective manner. The extent to which the Proposal includes clear and comprehensive evidence of the skills, experience, and qualifications of each team member.
- b. How well the descriptions provided in the Proposal show that the Proposer's team has strong expertise in each of the subject areas lists in Section IV.C.6.b.
- c. How well the qualifications and experience of proposed Core Team Members listed in the Proposal, as described by their resumes, support the Proposer's ability to successfully undertake the tasks described in the Scope of Services contained in Appendix B. SFMTA will give preference for up to 30 additional years of experience beyond the minimums set out in the Minimum Qualifications.
- d. How well the qualifications and experience of proposed Specialist Team Leaders listed in the Proposal, as described by their resumes, support the Proposer's ability to successfully undertake the tasks described in the Scope of Services contained in Appendix B. SFMTA will give preference for up to 30 additional years of experience beyond the minimums set out in the Minimum Qualifications.

**5. Project Approach (20 points)**

- a. How well the submitted Proposal conveys that Proposer understands the nature and extent of the services described in the Scope of Services contained in Appendix B. The extent to which the Project Approach contains a clear description of the objectives, requirements, and deliverables of the Project, as well as any specific challenges or constraints that must be addressed.
- b. How well the submitted Proposal describes Proposer's comprehensive plan, program, and methods for delivering the services described in the Scope of Services contained in Appendix B. The extent to which the Proposal includes a

clear and concise description of the services and activities that the Proposer will provide to the SFMTA, including the specific tasks and timelines the Proposer envisions necessary to support the Project, as well as the resources required to complete the project including any specialized or niche services.

- c. The quality of the Proposer's plans for communication with the SFMTA Project team, management, executives, stakeholders, CBTC Supplier, Installer, the LRV4 Manufacturer, and any of SFMTA's vendors. The extent to which the Project Approach includes a detailed overview of the communication channels that Proposer recommends and includes the frequency, methods, and protocols for communication.
- d. How well the Proposer's quality control/quality assurance program ensures that the SFMTA receives high-quality services and work products as part of its tasks.
- e. How well the Proposer's approach to handling the scenarios in Section IV.C.7.e (i-vi) meets or improves upon the SFMTA's Project approach with respect to the Project objectives as described in Appendix J (Reference Materials). The SFMTA will give preference to a Proposal that compares the Proposer's approach to the SFMTA's, showing the benefits to using the Proposer's approach, and citing Proposer's experience and best practices in doing so.

## **6. Oral Interview (20 points)**

The Evaluation Panel will hold oral interviews with Proposers that have met the Minimum Qualifications and whose Written Proposals are in the competitive range. Prior to Oral interviews, the SFMTA will send a letter to each invited Proposer regarding the format and general rules of the interview. The SFMTA reserves the right to limit participation in the panel interviews to Proposers' key/lead team members and to exclude, for example, subconsultants on multiple teams. The interview evaluation process may include (and be scored based on) a presentation by the Proposer and/or interview questions from the Evaluation Panel. Those questions may include and be related to Proposers' and key/lead team members' qualifications, their work approach, project task descriptions, team organization, and any questions which seek to clarify Proposal components. The Evaluation Panel will proceed to evaluate each Proposer based on the likely benefit to the Project demonstrated by the Proposer's presentation and responses.



## VI. Pre-Proposal Conference

### A. Pre-Proposal Conference

The SFMTA encourages Proposers to attend a virtual Pre-Proposal Conference via Microsoft Teams on **December 14, 2023**, at **10:00 AM PT**. The SFMTA will address Proposers' questions and will provide any new or additional information concerning the RFP or selection process at the Pre-Proposal Conference.

To attend the meeting, you can either click the "Click here to join the meeting" link below and/or call the phone number and enter the Conference ID.

Microsoft Teams meeting

#### Join on your computer or mobile app

[Click here to join the meeting](#) [Update Link]

#### Or call in (audio only)

[Insert Conference Call Number] United States, San Francisco

Phone Conference ID: [Insert Conference ID]

[Find a local number](#) | [Learn More](#) | [Meeting options](#)

For the Pre-Proposal Conference, Proposers are encouraged to submit questions in writing by email no later than [Insert the date], at [Insert the time] and directed to: [Kathy.Larson@sfmta.com](mailto:Kathy.Larson@sfmta.com).

Proposers are further encouraged to provide the following information to [Kathy.Larson@sfmta.com](mailto:Kathy.Larson@sfmta.com) to register for the Pre-Proposal Conference and have their information listed on the virtual sign up list.

1. Attendee Name
2. Organization Name
3. Organization's Business Address
4. Email/Phone Contact Information
5. Indicate if your firm is a Small Business Enterprise (SBE)/Disadvantaged Business Enterprise (DBE)
6. Indicate if your firm is interested in presenting a proposal as a Prime Contractor, Subcontractor or both.

The Pre-Proposal Conference will begin at the time specified, and company representatives are urged to arrive on time. Topics already covered will not be repeated for the benefit of late arrivals. **Failure to attend the Pre-Proposal Conference shall not excuse the successful Proposer from any obligations of a contract awarded pursuant to this RFP.** Any change or

addition to the requirements contained in this RFP as a result of the Pre-Proposal Conference will be executed by a written Addendum to this RFP. (See Section IX.E. below).

It is the responsibility of the Proposer to check for any Addenda, Q&A postings, and other updates, which will be posted on the City's Supplier Portal:

<https://sfcitypartner.sfgov.org/pages/index.aspx>.

## **B. Proposer Questions and Requests for Clarification**

Proposers shall address any questions regarding this RFP to the Contract Administrator whose name and contact information appears on the cover page of this RFP. Proposers who fail to submit questions concerning this RFP and its requirements will waive all further rights to protest based on the Scope of Work and conditions herein. **Questions must be submitted by email to the Contract Administrator whose name and contact information appears on the cover page of this RFP no later than the deadline for submission of written questions or requests for clarification stated in Section I.G.** A written Addendum will be executed addressing each question and answer and posted publicly. It is the responsibility of the Proposer to check for any Addenda and other updates that will be posted on the City's Supplier Portal:

<https://sfcitypartner.sfgov.org/pages/Events-BS3/event-search.aspx>.

## **VII. Contract Award**

The SFMTA will evaluate and rank Proposals as described herein, and intends to invite the highest-ranked Proposer to commence contract negotiations.

The negotiations will address the reasonableness of the Proposer's costs included in its Cost Proposal. The SFMTA must determine that the proposed fees are within a reasonable range for this type of work; and the hourly rates for the as-needed work are commensurate with the experience and skill level of assigned staff and within market rates for other consultants and personnel performing the same or similar work within the nine San Francisco Bay Area counties or location where the staff is based.

The successful Proposer will be required to enter into an Agreement substantially in the form of the Agreement attached hereto as Appendix B, Sample Agreement for Professional Services. The Agency's ranking of any Proposal or invitation to any Proposer to negotiate a contract shall not imply acceptance by the SFMTA of all terms of the Proposal, which are subject to further negotiations and approvals before the SFMTA may be legally bound thereby. If a satisfactory contract cannot be negotiated within a period of time deemed reasonable to the SFMTA, then the SFMTA, in its sole discretion, may terminate negotiations with that Proposer and begin contract negotiations with the next highest-ranked Proposer.

If negotiations are successful, failure to timely execute the Proposed Agreement, or to furnish any and all insurance certificates and policy endorsements, Proposal bonds or other materials required in the Proposed Agreement, shall be deemed an abandonment of the Proposal; and the SFMTA, in its sole discretion, may select another Proposer and retain the Proposal bond, if submitted.

**VIII. Insurance and Bonds**

**A. Insurance**

Prior to award, the successful Proposer(s) will be required to furnish evidence of insurance as outlined in Appendix B, Sample Agreement for Professional Services, Section V: Insurance.

**B. Reserved (Proposal Bond)**

**C. Reserved (Performance Bond)**

**D. Reserved (Fidelity Bond)**

**E. Failure to Provide Insurance and/or Bonds**

Unless otherwise stated, within 10 Days of the receipt of a Notice of Intent to Award of a Contract, the Proposer to whom the contract is awarded shall deliver the required bond documents and/or specified insurance certificates and policy endorsements to the SFMTA. If the Proposer fails or refuses to furnish the required bond and/or insurance within 10 Days after receiving Notice of Intent to Award of a Contract, the SFMTA may, at its option, determine that the Proposer has abandoned its Proposal. Thereupon the tentative award of said contract to this Proposer shall be canceled and the SFMTA shall notify the Proposer's surety and collect on the Proposal bond (or the check accompanying its Proposal shall be deposited with the Treasurer of the City and County of San Francisco for collection) and the proceeds thereof shall be retained by the SFMTA as partial liquidated damages for failure of such Proposer to properly file the required bonds and insurance. The foregoing in no way limits the damages that are recoverable by the SFMTA.

## **IX. Terms and Conditions for Receipt of Proposals**

### **A. Cybersecurity Risk Assessment**

As part of the evaluation process, the SFMTA may require a Cybersecurity Risk Assessment (CRA) for Proposers or any Proposer-related entity that would have access to the City's or the SFMTA's networks and systems under the resulting contract, including any Proposer-related entity that manufactures the technology and/or performs functions related to the technology services being procured.

As part of the CRA, the SFMTA will accept either of the following two reports:

1. **SOC-2 Type 2 Report:** Report on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy; or
2. **City's Cyber Risk Assessment Questionnaire:** Proposer's responses to a SFMTA's Cyber Risk Assessment Questionnaire.

The SFMTA may request these reports when considering a Proposer for selection or after selection. If so requested, the SFMTA will evaluate the reports and identify for Proposer any cyber risks that would require mitigation prior to selection or within a period of time that the SFMTA deems reasonable after selection. If awarded the contract, Proposer's compliance with such mitigation measures shall be subject to the SFMTA's on-going review as indicated by the SFMTA.

### **B. Errors and Omissions in RFP**

Proposers are responsible for reviewing all portions of this RFP. Proposers shall promptly notify the Contract Administrator, in writing, if the Proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Proposers should direct any such notification to the SFMTA promptly after discovery, but in no event later than the deadline for questions. The SFMTA will issue modifications and clarifications to the RFP as Addenda as provided below.

### **C. Inquiries Regarding RFP**

All communications regarding the RFP must be directed in writing to the Contract Administrator whose name and contact information appears on the cover page of this RFP:

Please include "**SFMTA-2024-20-FTA**" in the subject line of your email.

### **D. Objections to RFP Terms**

Should a Proposer object on any ground to any provision or legal requirement set forth in this RFP, the Proposer must, no later than the deadline for questions, provide written notice to the SFMTA setting forth with specificity the grounds for the objection. The failure of a Proposer

to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

**E. RFP Addenda**

The SFMTA may modify this RFP, prior to the Proposal due date, by issuing an Addendum to the RFP, which will be posted on the City’s Supplier Portal. Every Addendum will create a new version of the Sourcing Event (RFP) webpage, and Proposers must monitor the City’s Supplier Portal for new versions. **The Proposer shall be responsible for ensuring that its Proposal reflects any and all RFP Addenda issued by the City prior to the Proposal due date regardless of when the Proposal is submitted.** Therefore, the City recommends that the Proposer consult the website frequently, including shortly before the Proposal due date, to determine if the Proposer has downloaded all RFP Addenda. It is the responsibility of the Proposer to check for any Addenda, Questions and Answers documents, and updates, which may be posted to the subject RFP.

**THE SUBMITTAL OF A RESPONSE TO THIS RFP SHALL EXPLICITLY STIPULATE ACCEPTANCE BY THE PROPOSERS OF THE TERMS FOUND IN THIS RFP, ANY AND ALL ADDENDA ISSUED TO THIS RFP, AND THE PROPOSED CONTRACT TERMS.**

**F. Proposal Term**

Submission of a Proposal signifies that the proposed products, services and prices are valid for 180 calendar days from the Proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity. At Proposer’s election, the Proposal may remain valid beyond the 180-day period in the circumstance of extended negotiations.

**G. Revision to Proposal**

A Proposer may revise its Proposal on the Proposer’s own initiative at any time before the deadline for submission of Proposals. The Proposer must submit a revised Proposal in the same manner as the original. A revised Proposal must be received on or before the Proposal due date and time.

In no case will a statement of intent to submit a revised Proposal, or commencement of a revision process, extend the Proposal deadline for any Proposer.

At any time during the Proposal evaluation process, the SFMTA may require a Proposer to provide oral or written clarification of its Proposal. The SFMTA reserves the right to make an award without requesting such further clarification.

## **H. Proposal Errors and Omissions**

Failure by the SFMTA to object to an error, omission, or deviation in the Proposal will in no way modify the RFP or excuse the Proposer from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

## **I. Financial Responsibility**

The SFMTA accepts no financial responsibility for any costs incurred by a Proposer in responding to this Solicitation. Proposers acknowledge and agree that their submissions in response to this Solicitation will become the property of the City and may be used by the City in any way deemed appropriate.

## **J. Proposer's Obligations under the Campaign Reform Ordinance**

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code. Local law prohibits City elected officials from soliciting or accepting contributions from any person or entity seeking to enter into a contract or grant worth \$100,000 or more with the City, if the contract or grant requires their approval or the approval of their appointees to the board of a state agency. This restriction applies to the party seeking the contract or grant, the party's board of directors, chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest greater than 10 percent, and any political committees controlled or sponsored by the party, as well as any subcontractors listed in the awarded contract or Proposal. The law both prohibits the donor from giving contributions and prohibits the elected official from soliciting or accepting them.

A person or entity that contracts with the City may not make a campaign contribution to an elected official if the contract would require approval by that official, a board on which the official serves, or a board of a state agency on which an appointee of the official sits. The people and entities listed in the preceding paragraph may not make a campaign contribution to the elected official at any time from the submission of a Proposal for a contract until either: (1) negotiations are terminated and no contract is awarded or no grant is approved; or (2) 12 months have elapsed since the award of the contract or approval of the grant.

A violation of Section 1.126 may result in the criminal, civil, or administrative penalties. For further information, Proposers should contact the San Francisco Ethics Commission at [415-252-3100](tel:415-252-3100).

## **K. Limitation on Communications Prior to Contract Award**

It is the policy of the SFMTA that only SFMTA staff identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the

contractor selection is finally approved by the SFMTA Board of Directors and, if required, by the San Francisco Board of Supervisors.

All firms and subcontractor(s) responding to this RFP are notified that they may not contact any SFMTA staff member, other than the person(s) identified in the RFP as the authorized contact, for the purpose of influencing the contractor selection process or the award of the contract from the date the RFP is issued to the date when the contract award is approved by the SFMTA Board of Directors and, if required, by the San Francisco Board of Supervisors. This prohibition does not apply to communications with SFMTA staff members regarding normal City business not regarding or related to this RFP.

Any written communications sent to one or more members of the SFMTA Board of Directors concerning a pending contract solicitation shall be distributed by the SFMTA to all members of the SFMTA Board of Directors and the designated staff contact person(s) identified in the RFP.

Except as expressly authorized in the RFP, where any person representing a Proposer or potential Proposer contacts any SFMTA staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the SFMTA Board of Directors, and, if required, by the San Francisco Board of Supervisors, the Proposer or potential Proposer shall be disqualified from the selection process. However, a person who represents a Proposer or potential Proposer may contact City elected officials and may contact the Director of Transportation of the SFMTA if s/he is unable to reach the designated staff contact person(s) identified in the RFP or wishes to raise concerns about the competitive solicitation.

Additionally, the firms and subcontractor(s) responding to this RFP are prohibited from providing any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any SFMTA staff member from the date the RFP is issued to the date when the contract award is approved by the SFMTA Board of Directors and if required, by the San Francisco Board of Supervisors.

All lobbyists or any agents representing the interests of a Proposer (including prime contractors and subcontractor(s)) are also subject to these prohibitions.

A Proposer must submit with its Proposal an executed Attestation of Compliance (see Appendix C) certifying compliance with these requirements. The Attestation of Compliance must be signed by all firms and subcontractor(s) named in the Proposal. A Proposal that does not include the executed Attestation of Compliance as required by this section will be deemed non-responsive and will not be evaluated. Any Proposer who violates the prohibitions of this section, directly or through an agent, lobbyist or subcontractor, will be disqualified from the selection process.

## **L. Public Disclosure**

All documents under this RFP process are subject to public disclosure per the California Public Records Act (California Government Code Section §6250 et. Seq) and the San Francisco



Sunshine Ordinance (San Francisco Administrative Code Chapter 67). Contracts, Proposals, responses, and all other records of communications between the City and Proposers shall be open to inspection immediately after a contract has been awarded. Nothing in this Administrative Code provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit.

If the SFMTA receives a Public Records Request (Request) pertaining to this RFP, the SFMTA will use its best efforts to notify the affected Proposer(s) of the Request and to provide the Proposer with a description of the material that the SFMTA deems responsive and the due date for disclosure (Response Date). If the Proposer asserts that some or all of the material requested contains or reveals valuable trade secret or other information belonging to the Proposer that is exempt from disclosure and directs the SFMTA in writing to withhold such material from production (Withholding Directive), then the SFMTA will comply with the Withholding Directive on the condition that the Proposer seeks judicial relief on or before the Response Date. Should Proposer fail to seek judicial relief on or before the Response Date, the SFMTA shall proceed with the disclosure of responsive documents.

#### **M. Public Access to Meetings and Records**

If a Proposer receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the Proposer must comply with Chapter 12L. The Proposer must include in its Proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer's meetings and records, and (2) a summary of all complaints concerning the Proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Proposer's Chapter 12L submissions shall be grounds for rejection of the Proposal and/or termination of any subsequent Agreement reached on the basis of the Proposal.

#### **N. Reservations of Rights by the City**

The issuance of this RFP does not constitute an agreement by the City that any contract will be awarded by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, Proposal, or selection process;
2. Reject any Proposal or all Proposals;
3. Reissue a Request for Proposals;
4. Prior to submission deadline for Proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the

specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the Proposals;

5. Procure any materials, equipment or services specified in this RFP by any other means; or
6. Determine that no project will be pursued.

**O. No Waiver**

No waiver by the SFMTA of any provision of this RFP shall be implied from any failure by the SFMTA to recognize or take action on account of any failure by a Proposer to observe any provision of this RFP.

**P. Other**

1. The SFMTA may make such investigation, as it deems necessary, prior to the award of this contract to determine the conditions under which the goods are to be delivered or the work is to be performed. Factors considered by the SFMTA shall include, but not be limited to:
  - a. Any condition set forth in this RFP;
  - b. Adequacy of Proposer's plant facilities and/or equipment, location and personnel location to properly perform all Services called for under the Purchase Order; and
  - c. Delivery time(s).
2. The SFMTA reserves the right to inspect an awarded Proposer's place of business prior to award of and/or at any time during the contract term (or any extension thereof) to aid the SFMTA in determining an awarded Proposer's capabilities and qualifications.
3. The SFMTA reserves the right to reject any Proposal on which the information submitted by Proposer fails to satisfy the SFMTA and/or if Proposer is unable to supply the information and documentation required by this RFP within the period of time requested.
4. Any false statements made by a Proposer or any related communication/clarification may result in the disqualification of its Proposal from receiving further evaluation and a contract award.

**Q. Small Business Enterprise (SBE)/Disadvantaged Business Enterprise (DBE) Non-Discrimination**

The following information is provided to assist the Proposers in the preparation of Proposals. Please also see Appendix A for a description of SFMTA's SBE/DBE Program, along with all forms required for submittal of Proposals and for use by the Proposer.

**1. Policy**

The SFMTA is committed to an (SBE)/ (DBE) Program ("Program") for the participation of SBEs and DBEs in contracting opportunities. The SFMTA is also committed to compliance

with the federal regulations in 49 CFR Part 26, issued March 4, 1999, as amended from time to time (the "Regulations"). The Regulations are incorporated into this Program as though fully set forth herein. It is the intention of the SFMTA to create a level playing field on which SBEs and DBEs can compete fairly for contracts and subcontracts relating to the procurement and professional services activities of the SFMTA.

## 2. Questions

Questions concerning SBE/DBE Non-Discrimination Requirements should be addressed in writing to:

Preston Tom  
SFMTA, Contract Compliance  
One South Van Ness Ave., 6<sup>th</sup> Floor  
San Francisco, CA 94103

or

Email: preston.tom@sfmta.com

Please include "**SFMTA-2024-20-FTA**" in the subject line of your e-mail.

## 3. Non-Discrimination in Employment

SFMTA will evaluate the Proposer's response to the Questionnaire on Recruitment, Hiring, and Training Practices (MTA SBE/DBE Form No. 3) to determine whether the Proposer is in compliance with the Nondiscrimination Requirements.

Should SFMTA deem it necessary, the SFMTA will seek a written commitment from the Proposer to use good faith efforts to provide equal employment opportunities during the term of the contract. One measure of such a commitment would be comparing utilization of women and minorities with the relevant labor market in order to improve parity between the composition of the Proposer's workforce and the available labor market. The Proposer may be required to provide the SFMTA with the relevant data regarding its labor market.

## 4. SBE and DBE Goals

The Contract Compliance Office has established a **15% SBE participation goal** for this contract. Small business firms may qualify for this program by enrollment in the State of California's Small Business Program, the federal DBE program, or the City and County of San Francisco's LBE program. The SBE and Woman-owned DBE goals will apply to the following types of contracts or scope of work in the contract: Professional Services, Computer Programming and Design; Architecture and Engineering Services, Drafting (design services); Landscape Architecture; Building Inspection; Public Relations; Community Outreach; Telecommunications; Merchant Wholesalers, Durable Goods, and Machinery and Equipment Rental (construction) ("SBE/DBE Work").

To be determined responsive, a Proposer must demonstrate in its submittal that it will meet the goals in the performance of this contract; or if it is unable to meet the goals, the Proposer

must submit documentation (MTA Form 2 – SBE/DBE Consultant/Subconsultant – Good Faith Efforts) with its Proposal that it performed good faith efforts, prior to submission of the bid or Proposal, to meet this goal. A Proposer that is not responsive shall be ineligible for award of the contract.

**5. SBE/DBE Forms Required to be Submitted with Proposal (Note: SBE/DBE Forms provided in Appendix A to this RFP)**

In addition to the requirements on the content of the Proposal discussed above, proposed Consultants must submit the following forms with their Proposals:

1. Consultant/Joint Venture Partner and Subconsultant Participation Report (SFMTA SBE/DBE Form 1)
2. SBE/DBE Consultant/Subconsultant – Good Faith Efforts (SFMTA SBE/DBE Form 2)
3. Bidders List (SFMTA SBE/DBE Form 2A)
4. SBE/DBE Consultant/Joint Venture Partners/Subconsultant – Gross Revenue Declaration (SFMTA SBE/DBE Form No. 2B)
5. Questionnaire on Recruitment, Hiring and Training Practices for Consultants (SFMTA SBE/DBE Form 3)
6. Subconsultant Participation Declaration (SFMTA SBE/DBE Form 4)
7. SBE/DBE Acknowledgement Declaration (SFMTA SBE/DBE Form 5)
8. Joint Venture Participation Form (Schedule B)
9. A Copy of the firm’s Nondiscrimination Program or EEO Policy Statement (if any)

Note: Forms described in this paragraph do not count against the Proposal page limits specified in Section III.

**Forms shall be submitted as described in Section III. *Submission Requirements*. Please label the file/folder “SFMTA-2024-20-FTA SBE/DBE Forms.”**

Both proposed consultant and subconsultants will need to submit Items 3, 4 (if applicable), 5, and 9.

Items 1, 2 and 6 of this paragraph apply to the prime consultant only. Item 7 applies to the SBE/DBE subconsultant only. Information about all firms submitting quotes or proposals to the prime and subconsultants must be included on Item 3 (Bidders List). Directions for completing the above forms can be found in the SBE/DBE Program in Appendix A.

**R. Employment Nondiscrimination and Economically Disadvantaged Workforce Hiring Provisions**

A Proposer selected pursuant to this RFP may not, during the term of the 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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code. *Refer to the Sample Agreement terms for additional details related to the application of this Ordinance to a contract awarded pursuant to this RFP.*

**1. General**

As a material condition of contract award, the Proposer and its subcontractors agree to comply with the nondiscrimination in employment provisions required by Chapter 12B of the Administrative Code and the hiring of economically disadvantaged persons, as required by the City's First Source Hiring Program, Chapter 83 of the Administrative Code.

**2. Nondiscrimination Provisions**

As a material condition of the contract, the selected Proposer represents and agrees that:

a. It does and will not, during the term of the contract or any contract amendment, discriminate in the provision of benefits between its employees with spouses and employees with domestic partners.

b. The selected Proposer and its subcontractors on this contract will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of the Code. The consultant, contractor or subconsultant/subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

### 3. Non-Compliance with Chapter 12B Prior to Contract Award

As a material condition for award of the contract, the selected Proposer and its subcontractors must be in compliance with the nondiscrimination provisions of Chapter 12B, on all existing City contracts prior to award of this contract. The SFMTA shall have the authority to review the selected Proposer's and subcontractors' prior performance to ensure compliance with the nondiscrimination provisions of Chapter 12B.

If the SFMTA determines that there is cause to believe that any contractor or subcontractor is not in compliance with the nondiscrimination provisions of Chapter 12B, the SFMTA will attempt to resolve the non-compliance through conciliation.

- a. If the non-compliance cannot be resolved, the SFMTA will submit to the contractor or subcontractor a written Finding of Non-compliance.
- b. The SFMTA will give the contractor or subcontractor an opportunity to appeal the Finding.
- c. The SFMTA may, by written notice, stay the award of any contract to a Proposer where the Proposer or any subcontractor is the subject of an investigation for a violation of the City's non-discrimination ordinance(s).

### 4. Complaints of Discrimination after Contract Award

- a. A complaint of discrimination in employment initiated by any party after contract award shall be processed in accordance with CCO procedures.
- b. A finding of discrimination may result in imposition of appropriate sanctions, including:
  - (i) There may be deducted from the amount payable to the contractor or subcontractor under this contract a penalty of \$50 for each person for each calendar day the person was discriminated against in violation of the provisions of the contract.
  - (ii) The contract may be canceled, terminated or suspended in part by the SFMTA.
  - (iii) The consultant, subconsultant or vendor may be determined ineligible to perform work or supply products on any City contract for a period not to exceed two years.

Said sanctions are not the City's exclusive remedies, which may be imposed in combination with additional legal remedies, sanctions or penalties.

### 5. Trainees – SFMTA Employment Training Program

- a. **Trainee Requirements:** Contractors shall comply with the City's First Source Program, Administrative Code Section 83 (see Section X.E below), which fosters

employment opportunities for economically disadvantaged individuals. Contractors must notify the First Source Program of all open, entry-level positions and consider all program referrals fairly and equally.

In addition, the SFMTA requires contractors to hire a minimum number of professional service trainees in the area of the contractor’s expertise. These hires count toward the First Source Hiring requirements. Trainees may be obtained through the City’s One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

**Number of Trainees**

Project Fees	To Be Hired
\$0 – \$499,999	0
\$500,000 – \$899,999	1
\$900,000 – \$1,999,999	2
\$2,000,000 – \$4,999,999	3
\$5,000,000 – \$7,999,999	4
\$8,000,000 – \$10,999,999	5
\$11,000,000 – \$13,999,999	6
(> = \$14M, for each additional \$3 million in contractor fees, add one additional trainee)	

- b. The trainee must be hired by the contractor or by any subcontractor on the project team.
- c. No trainee may be counted towards meeting more than one contract goal.
- d. A trainee must meet qualifications for enrollment established under the City’s First Source Hiring Program as follows:
  - (i) “Qualified” with reference to an economically disadvantaged individual shall mean an individual who meets the minimum bona fide occupational qualifications provided by the prospective employer to the San Francisco Workforce Development System in the job availability notices required by the Program, and
  - (ii) “Economically disadvantaged individual” shall mean an individual who is either: (1) eligible for services under the Workforce Investment Act of 1988 (WIA) (29 U.S.C.A 2801 et seq.), as determined by the San Francisco Private Industry Council; or (2) designated “economically disadvantaged” for the First Source Hiring Administration, as an individual who is at risk of relying upon, or returning to, public assistance.

**San Francisco Municipal Transportation Agency**

RFP for Consulting Services Supporting the Communications-Based Train Control Upgrade Project

- e. On-the-job training (to be provided by the contractor): The contractor shall hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months, with prior approval offering him/her on-the-job training which allows the trainee to progress on a career path.
- f. Contractor shall submit for the City's approval a description and summary of training proposed for the trainee, along with the rate of pay for the position.
- g. The trainee's commitment does not require that he/she is used only on this project; the trainee may also be used on other projects under contract to the Proposer that may be appropriate for the trainee's skill development.



## **X. Contract Requirements**

### **A. Standard Contract Provisions**

The selected Proposer will be required to enter into a contract substantially in the form of the Sample Agreement for Professional Services, attached hereto as Appendix B. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, Proposal bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The SFMTA, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

### **B. Nondiscrimination in Contracts and Benefits**

As a material requirement of the contract, the selected Proposer shall comply with Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the CMD's website at: <http://sfgsa.org/index.aspx?page=6058>.

### **C. Minimum Compensation Ordinance**

A Proposer selected pursuant to this RFP is encouraged to comply with Administrative Code Chapter 12P. A Proposer selected pursuant to this RFP 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. A Proposer selected pursuant to this RFP 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>. *Refer to the Sample Agreement for additional details related to the application of this Ordinance to a contract awarded pursuant to this RFP.*

### **D. Health Care Accountability Ordinance**

A Proposer selected pursuant to this RFP is encouraged to comply with the requirements of Chapter 12Q. For each Covered Employee, an awarded Proposer shall provide the appropriate health benefit set forth in Section 12Q.3 of the Health Care Accountability Ordinance (HCAO). If a Proposer selected pursuant to this RFP 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 the Chapter 12Q and the Health Commission's minimum standards available at <http://sfgov.org/olse/hcao>. Any Subcontract entered into by Proposer shall also be required to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this section. *Refer to the Sample Agreement for additional details related to the application of this Ordinance to a contract awarded pursuant to this RFP.*

**E. First Source Hiring Program**

A Proposer selected pursuant to this RFP shall 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 an awarded Proposer is subject to the enforcement and penalty provisions in Chapter 83. Additional information regarding the FSHP is available on the web at <http://oewd.org/first-source> and from the First Source Hiring Administrator, [business.services@sfgov.org](mailto:business.services@sfgov.org) or call (415) 701-4848. *Refer to the Sample Agreement for additional details related to the application of this Ordinance to a contract awarded pursuant to this RFP.*

**F. Conflicts of Interest**

The selected Proposer must agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City’s Charter, Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The selected Proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the SFMTA on behalf of the selected Proposer might be deemed “contractors” under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within 10 days of the SFMTA’s notice of award of the contract.

**G. (Reserved) Prevailing Wage Ordinance**

**Appendix A to RFP**  
**SFMTA Small Business Enterprise/Disadvantaged Business**  
**Enterprise Program for Professional and Technical Services**  
**Requirements for Architects, Engineers, Planners, Environmental Scientists and**  
**Other Professional Services Contracts**

*Appendix A* is a separate file to be downloaded from the online posting for this RFP on the San Francisco City's Supplier Portal.

You may access the website at the following link:

<https://sfcitypartner.sfgov.org/pages/index.aspx>

## Appendix B to RFP

### Sample Agreement for Professional Services (Form P-600)

*Appendix B* is a separate file to be downloaded from the online posting for this RFP on the City's Supplier Portal.

You may access the website at the following link:

<https://sfcitypartner.sfgov.org/pages/index.aspx>

## Appendix C to RFP

### Attestation of Compliance

*To be completed by all Proposing Firms and All Proposed Subcontractors*

(Please check each box, sign this form and submit it with your response.)

Name of individual completing this form: \_\_\_\_\_

The form is submitted on behalf of firm: \_\_\_\_\_

Name of RFP: SFMTA-2024-20-FTA

1. I attest that I and all members of the firm listed above will and have complied to date with Section [Insert Correct Sec.SubSec. Ref. (normally "IX.K")] of the above RFP.

Yes

2. I understand that if my firm or any members of the firm listed above are found to be in violation of Section [Insert Correct Sec.SubSec. Ref. (normally "IX.K")] of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration.  Yes

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix D to RFP

*To be completed by all Proposing Firms and All Proposed Subcontractors*

### **Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

By signing and submitting its Proposal, the Proposer or proposed subcontractor certifies as follows:

(1) \_\_\_\_\_  
(Proposer or Proposed Subcontractor Business Name)

certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, voluntarily excluded, or disqualified from contracting with any federal, state or local governmental department or agency;
  - b. Have not within a three-year period preceding the date of this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) or private agreement or transaction; violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)b of this certification; and
  - d. Have not within a three-year period preceding the date of this Proposal had one or more public contracts (federal, state, or local) terminated for cause or default.
- (2) Where the firm executing this RFP Appendix D is unable to certify to any of the statements in this certification, such firm shall attach a detailed explanation of facts that prevent such certification.
- (3) The certification in this clause is a material representation on fact relied upon by the San Francisco Municipal Transportation Agency. If it is later determined that the Proposer or proposed subcontractor knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

As the authorized certifying official, I certify that the above-specified certifications are true.

\_\_\_\_\_  
Business Name

\_\_\_\_\_  
Authorized Representative Name (print)

\_\_\_\_\_  
Authorized Representative Title (print)

---

Authorized Representative Signature

---

Date

## Appendix E to RFP

*To be completed by all Proposing Firms and All Proposed Subcontractors*

### Certification Regarding Lobbying

Certification for Contracts, Grants, Loans and Cooperative Agreements  
*(To be submitted with each bid or offer exceeding \$100,000)*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. [https://www.gsa.gov/cdnstatic/SFLLL\\_1\\_2\\_P-V1.2.pdf?forceDownload=1](https://www.gsa.gov/cdnstatic/SFLLL_1_2_P-V1.2.pdf?forceDownload=1)

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Proposer or proposed subcontractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant or Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.



Business Name

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Authorized Representative Name (print)

---

Authorized Representative Title (print)

---

Authorized Representative Signature

---

Date

## Appendix F to RFP

**This should be applied to Consultant Services Contracts and not for Procurement of Goods and/or Services.**

*To be completed by all Proposing Firms and Submitted as a Separate Electronic File;  
Do Not Include the Cost Proposal in Your Main Proposal Document File*

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

*Cost proposal submittals must comply with the Federal Acquisition Regulation (FAR) part 31 (federal cost principles for for-profit entities)*

### Cost Proposal

**Table 1:** Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and Subcontractors proposed personnel. Provide the following: name of firm; name of individual; position/job classification or types of work individual will perform; education/experience, direct hourly labor rate; fully burdened hourly labor rates (sums of direct hourly labor rate and overhead rate, as applicable). Direct hourly labor rate should not include fringe and benefits. Table 1 shall include all personnel listed in the Proposal. SFMTA will only accept invoices for labor charges from the personnel listed in this table, or as approved by SFMTA according to the procedures in the Sample Agreement Section 4.4.2, Key Personnel.

*\* Fully Burdened Hourly Labor Billing Rate = Direct Hourly Rate x Multiplier listed in Table 2*

**Example Table 1a: Project Management Support: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for Core Project Team</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.  (Product of Direct Hourly Labor Rate x Multiplier)</b>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	Project Manager			
"Subconsultant A"	Employee B	Technician			
"Subconsultant B"	Employee C	Technician			

**Example Table 1b: Contract Management Support: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for Contract Management Support</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.  (Product of Direct Hourly Labor Rate x Multiplier)</b>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	Contract Management Lead			
"Subconsultant A"	Employee A	Technician			
"Subconsultant B"	Employee A	Technician			

**Example Table 1c: Construction Management Support: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for Construction Management Support</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.  (Product of Direct Hourly Labor Rate x Multiplier)</b>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	Construction Manager			
"Subconsultant A"	Employee A	Technician			
"Subconsultant B"	Employee A	Technician			

**Example Table 1d: Design and Engineering: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for Design and Engineering</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.</b> <small>(Product of Direct Hourly Labor Rate x Multiplier)</small>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	Lead Engineer			
"Subconsultant A"	Employee A	Lead Vehicle Engineer			
"Subconsultant B"	Employee A	Technician			

**Example Table 1e: System Integration Support: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for System Integration Support</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.</b> <small>(Product of Direct Hourly Labor Rate x Multiplier)</small>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	System Integration Lead			
"Subconsultant A"	Employee A	Technician			
"Subconsultant B"	Employee A	Technician			

**Example Table 1f: Quality Assurance Support: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for Quality Assurance Support</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.</b> <small>(Product of Direct Hourly Labor Rate x Multiplier)</small>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	QA Lead			
"Subconsultant A"	Employee A	Technician			
"Subconsultant B"	Employee A	Technician			



**Example Table 1g: Test Program Support: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for Test program Support</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.</b> <small>(Product of Direct Hourly Labor Rate x Multiplier)</small>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	Testing and Commissioning Lead			
"Subconsultant A"	Employee A	Technician			
"Subconsultant B"	Employee A	Technician			

**Example Table 1h: Safety and Security Program Support: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for Safety and Security Program Support</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.  (Product of Direct Hourly Labor Rate x Multiplier)</b>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	Safety Lead			
"Subconsultant A"	Employee A	Security Lead			
"Subconsultant B"	Employee A	Technician			

**Example Table 1i: Commissioning and Start-up Activities: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for Commissioning and Start-up Activities</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.  (Product of Direct Hourly Labor Rate x Multiplier)</b>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	Testing and Commissioning Lead			
"Subconsultant A"	Employee A	Technician			
"Subconsultant B"	Employee A	Technician			

**Example Table 1j: Post-Delivery Support: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for Post-Delivery Support</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.  (Product of Direct Hourly Labor Rate x Multiplier)</b>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	Post-Delivery, Maintenance and Support Lead			
"Subconsultant A"	Employee A	Technician			
"Subconsultant B"	Employee A	Technician			

**Example Table 1k: Operations and Maintenance Support: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for Operations and Maintenance Support</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.  (Product of Direct Hourly Labor Rate x Multiplier)</b>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	Service and Operations Planning Lead			
"Subconsultant A"	Employee A	Technician			
"Subconsultant B"	Employee A	Technician			

**Example Table 11: Other Services: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors**

<b>Direct Salary Rates for Other Services</b>				<b>Fully Burdened Billing Rate*: Office or Field? Include only one.</b> <small>(Product of Direct Hourly Labor Rate x Multiplier)</small>	
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Direct Hourly Labor Rate</b>	<b>Office Billing Rate*</b>	<b>Field Billing Rate*</b>
"Prime Consultant"	Employee A	Project Manager			
"Subconsultant A"	Employee A	Technician			
"Subconsultant B"	Employee A	Technician			

**Table 2a:** Schedule of Overhead Rates for Contractor and all Subcontractors. Include Contractor and all Subcontractor Overhead percentage. Multiplier shall be calculated the following way: Convert Overhead Rate in percentage (%) to a decimal, then add 1 (See examples in the table below). Ensure that all overhead costs (e.g., fringe and benefits) have been included in your overhead rates. These overhead costs should not be included in your direct hourly rate.

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

<b>Firm</b>	<b>Overhead (%)</b>	<b>Multiplier</b>
“Prime Contractor”	“110%”	110% = 1.1; 1.1 + 1 = <b>2.10</b>
“Subconsultant A”	“120%”	120% = 1.2; 1.2 + 1 = <b>2.20</b>
“Subconsultant B”	“90%”	90% = 0.9; 0.9 + 1 = <b>1.90</b>

**Table 2b: Profit and Markup for Contractor and Subcontractors**

1. Profit not to exceed 8%
2. Prime Contractor markup on labor performed by Subcontractor: 3%

## Appendix G to RFP

### FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

#### I. DEFINITIONS

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



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

## **II. FEDERAL CHANGES**

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

## **III. ACCESS TO RECORDS**

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

## **IV. DEBARMENT AND SUSPENSION**

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

f) Disqualified from participation in any federally assisted Award.

See Appendix D, Certification Regarding Debarment, Suspension, and Other Responsibility Matters

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

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

**A.** The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

## **VI. CIVIL RIGHTS**

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

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

**C. Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

**1. Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard

to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

## VII. DBE/SBE ASSURANCES

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

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

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

- A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.
- B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor’s status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary

actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 CFR Part 401.

- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

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

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

- 1. Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
- 2. Federal License.** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:
  - a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
  - b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.
- 3. FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is FTA’s general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless

FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

- 4. Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
  - 5. Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  - 6. Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
  - 7. Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- C. Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- D. Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and

Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” 37 CFR Part 401.

**X. CONTRACT WORK HOURS AND SAFETY STANDARDS** *(applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work)*

- A. Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages** – The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

**XI. ENERGY CONSERVATION REQUIREMENTS**

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

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

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

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

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

**XIV. PRIVACY**

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

**XV. DRUG AND ALCOHOL TESTING**

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

**XVIII. BUY AMERICA**

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

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

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

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

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

- A.** Procure or obtain;
- B.** Extend or renew a contract to procure or obtain; or
- C.** Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Section 889 of Public Law 115-232, covered telecommunications equipment is:
  - 1. telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - 2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).



3. Telecommunications or video surveillance services provided by such entities or using such equipment.
4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

## **XX. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS**

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

## **XXI. RECYCLED PRODUCTS**

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

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

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

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and

access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.

- C. **Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

### **XXIII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted Project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a Project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### **XXIV. FLY AMERICA**

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

**XXV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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

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

**A.** The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

- 1. General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient’s Project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.
- 2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL’s letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform

transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

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

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

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

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

**XXVIII. TEXTING WHILE DRIVING; DISTRACTED DRIVING**

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

**XXIX. SEAT BELT USE**

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

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

Certification Regarding Lobbying required (See Appendix E).

**XXXI. PROMPT PAYMENT**

**A.** 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

subcontractors. Unless the prime Contractor notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subcontractor. Within five working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractors.

- B.** Contractor may withhold retention from subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within 30 days of City's payment of retention to Contractor for satisfactory completion of all work required of a subcontractor, Contractor shall release any retention withheld to the subcontractor. Satisfactory completion shall mean when all the tasks called for in the subcontract with subcontractor have been accomplished and documented as required by City. If the Contractor does not pay its subcontractor as required under the above paragraph, it shall pay interest to the subcontractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

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

As provided by 49 U.S.C. § 5325(k):

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

**Appendix H to RFP**  
**SAN FRANCISCO**  
**MUNICIPAL TRANSPORTATION AGENCY**

**PROTEST PROCEDURES FOR**  
**FEDERALLY ASSISTED CONTRACTS**  
**REVISED: AUGUST 2019**

The following procedures apply to the receipt, evaluation and determination of Protests challenging the Selection Process leading to the award of a federally funded contract (excluding procurement of rolling stock):

- 1. Protest Definition:** A Protest is a written challenge by a Proposer concerning the manner in which the SFMTA has conducted a Selection Process or the selection of one Proposer or Proposal over another. An entity or person that has not submitted a Proposal may not submit a Protest. An objection to the contents or requirements of Proposal Documents is not a Protest (and shall be addressed under other provisions of the Proposal Documents).
- 2. Protest Requirements:** A Protest must state with specificity each and every one of the grounds on which the Proposer challenges the Selection Process or the selection of one Proposer or Proposal over another. A Protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the Protest is based. In addition, the Protestor must specify facts and evidence sufficient for the SFMTA to evaluate and determine the validity of the Protest.
- 3. Protest Deadline:** A Protest must be submitted in writing to the SFMTA fully explaining the nature of the protest. The Protest shall be submitted to the SFMTA no later than ten Days after the SFMTA issues notice to the Proposers of the results of the Selection Process. Nothing in this procedure precludes the SFMTA from continuing with a Selection Process pending the resolution of any Protest.
- 4. Protest Submission:** A protest must be submitted to the SFMTA Manager identified below with a copy sent to the SFMTA contact person identified in the SFMTA Proposal Documents:

Trinh Nguyen  
Principal Engineer/Manager  
FTA Contracts and Procurement  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 6<sup>th</sup> Floor, Room 6161  
San Francisco, CA 94103  
trinh.nguyen@sfmta.com

- 5. Protest Review and Determination:** A designated SFMTA staff person will review any Protest to the extent that it does not relate to SBE or DBE requirements. The SFMTA will

provide a written response to each material issue or allegation stated in the Protest and explain the SFMTA's reasons for its decision. To the extent that a Protest makes claims regarding any other Proposer, the SFMTA may solicit a response(s) from that Proposer before issuing its written determination.

6. **DBE- or SBE-Related Protests:** To the extent that a Protest involves DBE or SBE requirements, the SFMTA contact person identified in the SFMTA Proposal Documents shall forward a copy of the protest to the Contract Compliance Office (CCO) for review. The CCO shall review DBE or SBE requirements for the project, examine whether the protest has merit, and provide a detailed written analysis of the Protest to the designated SFMTA staff person handling the Protest. The CCO may contact the Protestor or any other Proposer or proposed subcontractor as necessary to investigate the Protest.

Where a Protest concerns whether a Proposer has met a DBE or SBE goal or demonstrated good faith efforts in reaching such a goal, the CCO's determination shall be incorporated into the SFMTA staff written determination. When the CCO has determined that a Proposer has failed to meet its goal or make required good faith efforts, the procedures in the Agency's DBE or SBE Program shall govern any request for reconsideration from the Proposer.

7. **Appeal of Staff Determination:** A Protestor dissatisfied with the SFMTA's written response may appeal that decision to the Director of Transportation no later than five Days following the date the SFMTA staff person issues his or her decision. The Director will review the Protest and the SFMTA staff decision. The Director may, in his or her sole discretion, affirm the staff determination or issue an alternate determination. If not appealed, the SFMTA staff decision is the final administrative determination of the Protest. If the staff decision is appealed, the determination of the Director of Transportation is the final administrative determination of the Protest. This Section does not apply to Protests where the appeal is subject to the Agency's DBE or SBE Program in accordance with Section 6.
8. **Federal Transit Administration (FTA) Consideration:** The FTA will not substitute its judgment for that of the SFMTA unless the matters at issue involve primarily Federal concerns.
9. **Definitions:** For purposes of these procedures, the following terms shall have the stated meanings:
  - a. **Days:** Working days of the City and County of San Francisco (unless otherwise indicated).
  - b. **Proposal:** An offer to provide goods and/or services submitted in response to an invitation for bids (IFB), a request for proposals (RFP), or a statement of qualifications submitted in response to a request for qualifications (RFQ).
  - c. **Proposal Documents:** The IFB, RFP or RFQ, and other documents issued by the SFMTA, to advertise or solicit Proposals.
  - d. **Proposer:** A person or entity that submits a Proposal.

- e. **Selection Process:** The SFMTA process to solicit and evaluate Proposers and Proposals, determine whether Proposers are responsible and Proposals are responsive, and select Proposers to negotiate a proposed contract.



## **Appendix I to RFP**

*To be completed by all Proposing Firms*

### **Minimum Qualifications Forms**

Complete the forms in Appendix I as required by Section IV.C.3 (Minimum Qualifications Documentation).

## MQ1 Form

(Attach additional pages as necessary)

### Project 1:

Project Name: \_\_\_\_\_

Customer Date of Award: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Contact Information: \_\_\_\_\_

Number of years on Project: \_\_\_\_\_

### Project 2:

Project Name: \_\_\_\_\_

Customer Date of Award: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Contact Information: \_\_\_\_\_

Number of years on Project: \_\_\_\_\_

### Project 3:

Project Name: \_\_\_\_\_

Customer Date of Award: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Contact Information: \_\_\_\_\_

Number of years on Project: \_\_\_\_\_

### Project 4:

Project Name: \_\_\_\_\_

Customer Date of Award: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Contact Information: \_\_\_\_\_

Number of years on Project: \_\_\_\_\_

**MQ2 Form**

**Project 1:**

Project Name: \_\_\_\_\_

Length of Line in miles (double track): \_\_\_\_\_

Signaling System Supplier / Technology: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Contact Information: \_\_\_\_\_

Brownfield/Greenfield Project:      Brownfield       Greenfield       Both

If answered "Both", additionally complete the table below:

	Brownfield	Greenfield
Length of Line in miles (double track)		
Date of Revenue Service: _____	or	Project is ongoing <input type="checkbox"/>

**Project 2:**

Project Name: \_\_\_\_\_

Length of Line in miles (double track): \_\_\_\_\_

Signaling System Supplier / Technology: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Contact Information: \_\_\_\_\_

Brownfield/Greenfield Project:      Brownfield       Greenfield       Both

If answered "Both", additionally complete the table below:

	Brownfield	Greenfield
Length of Line in miles (double track)		

Date of Revenue Service: \_\_\_\_\_ or Project is ongoing

**Project 3:**

Project Name: \_\_\_\_\_

Length of Line in miles (double track): \_\_\_\_\_

Signaling System Supplier / Technology: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Contact Information: \_\_\_\_\_

Brownfield/Greenfield Project:      Brownfield       Greenfield       Both

If answered "Both", additionally complete the table below:

	Brownfield	Greenfield
Length of Line in miles (double track)		
Date of Revenue Service: _____ or		Project is ongoing <input type="checkbox"/>

## MQ3 Form

### Project Manager Experience

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

Total experience  
\_\_\_\_\_ yrs

Describe how the Project Manager has developed CBTC project management experience while holding each of the positions listed on this form.

## Lead Engineer Experience

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

Total experience  
\_\_\_\_\_ yrs

Describe how the Lead Engineer has developed CBTC engineering experience while holding each of the positions listed on this form.

## Lead Vehicle Engineer Experience

yrs Job Title Vehicle	Company/Organization	____ yrs Train Control
yrs Job Title Vehicle	Company/Organization	____ yrs Train Control
yrs Job Title Vehicle	Company/Organization	____ yrs Train Control
yrs Job Title Vehicle	Company/Organization	____ yrs Train Control
yrs Job Title Vehicle	Company/Organization	____ yrs Train Control
<b>Total experience</b> ____ yrs Vehicle		____ yrs Train Control

Describe how the Lead Vehicle Engineer has developed vehicle engineering experience and train control engineering experience while holding each of the positions listed on this form.

## Construction Manager Experience

_____ yrs Job Title Construction	_____ Company/Organization	_____ yrs Train Control
_____ yrs Job Title Construction	_____ Company/Organization	_____ yrs Train Control
_____ yrs Job Title Construction	_____ Company/Organization	_____ yrs Train Control
_____ yrs Job Title Construction	_____ Company/Organization	_____ yrs Train Control
_____ yrs Job Title Construction	_____ Company/Organization	_____ yrs Train Control
Total experience _____ yrs Construction		_____ yrs Train Control

Describe how the Construction Manager has developed construction management experience and train control construction management experience while holding each of the positions listed on this form.



## Quality Assurance Lead Experience

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

Total experience  
\_\_\_\_\_ yrs

Describe how the Quality Assurance Lead has developed experience in train control or vehicle quality assurance while holding each of the positions listed on this form.

## Testing and Commissioning Lead Experience

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

Total experience  
\_\_\_\_\_ yrs

Describe how the Testing and Commissioning Lead has developed CBTC testing experience while holding each of the positions listed on this form.

## Safety Lead Experience

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

---

yrs  
Job Title

---

Company/Organization

Total experience  
\_\_\_\_\_ yrs

Describe how the Safety Lead has developed CBTC safety program experience while holding each of the positions listed on this form.

## Service and Operations Planning Lead Experience

yrs Job Title Ops Management	Company/Organization	____ yrs Train Control
yrs Job Title Ops Management	Company/Organization	____ yrs Train Control
yrs Job Title Ops Management	Company/Organization	____ yrs Train Control
yrs Job Title Ops Management	Company/Organization	____ yrs Train Control
yrs Job Title Ops Management	Company/Organization	____ yrs Train Control
<b>Total experience</b> ____ yrs Ops Management		____ yrs Train Control

Describe how the Service and Operations Planning Lead has developed experience in rail operations and experience managing rail operations with a CBTC system while holding each of the positions listed on this form.

## **Appendix J to RFP Reference Materials**

The information in this Appendix is provided for reference. The specific materials to be used for specific Tasks will be provided with individual Task Orders.

Appendix J includes the following documents:

1. Supplier Sample Agreement
2. Supplier Contract Specifications
3. Train Control Upgrade Project Management Plan
4. CBTC Concept of Operations and Maintenance
5. Project Integration Management Plan
6. CBTC Safety and Security Management Plan

**Appendix J consists of documents that are part of the Communications Based Train Control RFP (“Request for Proposals for the Design, Procurement, System Implementation, Support and Related Services for a Communications Based Train Control System” SFMTA-2022-40-FTA)**

**This information will be attached to this RFP when it is posted. For reference, these documents were included in the MTA Board package when SFMTA-2022-40-FTA was approved by the Board on January 17, 2023 and can be found in the staff report for that item.**

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

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

**[Insert name of Contractor]**

**[Contract No. SFMTA-2024-20-FTA]**

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

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

**[Insert name of contractor]**

**Contract No. SFMTA-2024-20-FTA**

This Agreement is made as of \_\_\_\_\_, in the City and County of San Francisco (City), State of California, by and between [name of Contractor, and corporate/business status (e.g., “ABC, Inc., a California corporation”)] (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

**A.** The SFMTA wishes to obtain qualified consultant services to support the Train Control Upgrade Project in the procurement, design, engineering, contract administration, integration, construction management, deployment, and acceptance of a new Communications-Based Train Control (CBTC) system. The intent of this professional services contract is to enable the SFMTA to obtain ongoing technical assistance from the selected Contractor on an as-needed basis during the CBTC project.

**B.** This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on [insert date], pursuant to which City selected Contractor as the highest-qualified scorer.

**C.** The Small Business Enterprise (SBE) subcontracting participation requirement for this Agreement is 15%.

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

**E.** The City’s Civil Service Commission approved Contract number 44708- 21/22 for this Agreement on April 18, 2022.

**F.** The City’s Municipal Transportation Agency Board of Directors approved this Agreement by [insert resolution number] on [insert date of Board action].

**G.** The City’s Board of Supervisors approved this Agreement by [insert resolution number] on [insert date of Commission or Board action].

*Now, THEREFORE, the parties agree as follows:*

## **Article 1      Definitions**

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

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

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

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

**1.4**      “**CBTC**” means the Communications-Based Train Control system described in contract SFMTA-2022-40-FTA.

**1.5**      “**CBTC Safety and Security Management Plan**” means a document by that name included with the Reference Materials.

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

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

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

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

**1.10**     “**Confidential Information**” means information, documents, schematics, plans and data that the SFMTA has identified as confidential or otherwise withheld from public access without the express written authority of the SFMTA, which includes, but is not limited to Security Sensitive Information (SSI) and Critical Infrastructure Information (CII), and proprietary information from third parties that is licensed to the SFMTA.

**1.11**     “**Concept of Operations and Maintenance**” means a document called “CBTC Concept of Operations and Maintenance” included with the Reference Materials.



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

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

**1.14 “Contractor” or “Consultant”** means [insert name and address of Contractor].

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

**1.16 “Core Project Team”** means the Consultant’s project manager and staff named in Section 4.4.2.

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

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

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

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

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

**1.22 “FTA”** means the Federal Transit Administration.

**1.23 “Installer”** means a third-party contractor(s) that the SFMTA has engaged to install CBTC equipment on the wayside, in control rooms, and on vehicles.

**1.24 “Key Personnel”** means Contractor’s personnel named in Section 4.4.2. Key Personnel are either members of the Core Project Team or Specialist Team Leads.

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

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

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

**1.28** “**Project Integration Management Plan**” means a document by that name included with the Reference Materials.

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

**1.30** “**Project Management Plan**” means a document called “Train Control Upgrade Project Management Plan” included with the Reference Materials.

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

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

**1.33** “**Reference Materials**” means the documents provided as Appendix J to the RFP.

**1.34** “**RFP**” means RFP No SFMTA-2024-20-FTA, unless otherwise specified.

**1.35** “**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.

**1.36** “**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.

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

**1.38** “**Specialist Team Leads**” means Contractor’s personnel listed in Section 4.4.2, other than the Core Project Team, who are experts in one or more key disciplines and who lead one or more teams of specialists to deliver the specific categories of services listed in Section 2 of Appendix A.

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

**1.40** “**Supplier**” or “**Train Control System Supplier**” means the firm who has been awarded the contract described in RFP SFMTA-2022-40-FTA.

**1.41 “Supplier Contract Specifications”** means a document by that name included with the Reference Materials.

**1.42 “Supplier Sample Agreement”** means a document by that name included with the Reference Materials.

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

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

**2.1** The term of this Agreement shall commence on the [insert Contractor’s start date or Effective Date] and expire on [insert expiration date], unless earlier terminated as otherwise provided herein.

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

## **Article 3 Financial Matters**

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

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

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

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

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

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

(b) a negotiated number of hours per Task Order (using the hourly labor rates set forth in Appendix B (Calculation of Charges) plus a fixed profit and, if applicable, Subcontractor markup negotiated in accordance with Appendix B) subject to a total not to exceed amount for the Task Order.

(c) In no event shall the amount of this Agreement exceed the amounts in the below table, based on the year and the Options exercised.

Years since NTP	Not to Exceed Amount
0-5	\$25,000,000
5-6	\$27,200,000
6-7	\$29,400,000
7-8	\$31,600,000
8-9	\$33,800,000
9-10	\$36,000,000

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

(a) **Direct Hourly Labor Rates.** The direct hourly labor rates in Appendix B shall be fixed at that level until 12 months after the award date of this Agreement. Thereafter, during the term of this Agreement and the Option, if exercised, Contractor may request to escalate these rates based on actual changes to billing rates, but only up to the annual percentage change of the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U). Contractor must request any escalation of these direct hourly labor rates no later than 30 Days before the anniversary of the award date of this Agreement, and failure to timely do so may result in a delay of the request. Any requests for escalation of fees must include evidence of the actual changes in Consultant’s staff’s billing rates and the change in the CPI-U. The SFMTA will review all requests for escalation of fees within 30 Days of receipt and notify Contractor of either an approval or denial. If approved, the new rates will be approved under a contract modification signed by both parties. In no event will the start of the new rates be

backdated unless it can be shown that there was a delay on the part of the SFMTA in reviewing the request for escalation of rates. No direct hourly labor rate may be increased without prior written approval of the SFMTA and will be Effective once a Contract Modification is executed.

**(b) Overhead Rates**

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

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

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

**(d) Out-of-Pocket Expenses.** The SFMTA will reimburse Contractor for the actual cost of approved out-of-pocket expenses for the prime Contractor and Subcontractors. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All expenses required to perform a task must be described in detail in the Task Order

scope of work and identified as a line item in the Task Order budget. If unforeseen expenses are required to perform the Task Order scope of work after the Task Order has been issued as a Purchase Order, such costs must be documented in detail and pre-approved in writing by the SFMTA. All travel expenses are to be pre-approved by the SFMTA and Contractor must obtain the best air fare available in a timely fashion. Receipts for all expenses must accompany the invoice.

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

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

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

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

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

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

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

- (a) Contract Number
- (b) Task Order Number
- (c) Purchase Order Number for the Task Order
- (d) A copy of the receipts for all expenses invoiced
- (e) Description of the Services performed and/or goods delivered

- (f) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced except where Contractor invoices for a deliverable that is priced in the Task Order as a lump sum, or as estimated milestone payments described in the Task Order budget
- (g) Other direct costs; Subcontractor costs supported by invoice itemization in the same format as described here
- (h) Profit for current invoice period. Profit will be calculated as a prorated portion of the total profit for the task for which Contractor seeks payment. Profit will be for an amount not to exceed [Enter negotiated percent, ex: 7%] of the total Contract value
- (i) Total mark-up for current invoice period for all Subcontractor's work effort for that invoice period as an amount not to exceed [Enter negotiated percent, no more than 3%] percent of Subcontractor's total labor charges
- (j) Contract payment terms;
- (k) Sales/use tax (if applicable);
- (l) Total costs
- (m) Progress Payment Form – SFMTA Form No. 6

#### 3.4.4 Payment Terms

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

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

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

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

**3.4.6 SBE/DBE Payment and Utilization Tracking System.** Contractor shall pay SBE/DBE subcontractors within three business days of receipt of payment from the City. Within ten business days of the SFMTA's payment of an invoice, Contractor shall confirm that all subcontractors have been paid via the B2GNow System



(<https://sfmta.diversitycompliance.com/>). Failure to submit all required payment information to the City's Financial System with each payment request may result in the withholding of 20% of the payment due.

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

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

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

### **3.4.8 Grant-Funded Contracts**

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

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

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

**3.5 Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data

and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

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

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

## **Article 4 Services and Resources**

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

**4.2 Changes.** The SFMTA may at any time, by a written order, make changes within the general scope of this Agreement. Such change shall serve to modify this Agreement to the extent necessary to execute the change as directed. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Services under this Agreement, whether changed or not changed by the order, the SFMTA shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the Agreement accordingly. The Contractor must assert its right to an adjustment under this article within three working days from the date of receipt of the written order. Failure by Contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment. However, if the SFMTA decides that the facts justify it, the SFMTA may receive and act upon a

proposal submitted at any time before final payment of the Agreement. If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, the SFMTA shall have the right to prescribe the manner of the disposition of such equipment or materials. Failure to agree to any adjustment shall be a dispute under Section 11.6, Dispute Resolution Procedure. However, nothing in this provision shall excuse the Contractor from proceeding with the Agreement as changed.

**4.3 Task Order Requirements.** Contractor shall perform the Services under Task Orders the SFMTA issues in accordance with the process described below. The SFMTA will define requirements for Task Orders. The scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required SBE/DBE forms, and the Contractor proposal must be incorporated into the overhead rate (as approved in Appendix B). Additionally, project management costs may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, a task monitoring system (e.g., bi-weekly project reports or monthly status updates). Contractor time spent managing or overseeing work performed by Subcontractors will not be compensable.

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

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

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

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

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

(c) A list of personnel and Subcontractors Contractor proposes to work on each Task Order; and, for each personnel and Subcontractor, a description of the task(s)

or subtask(s) they will perform, and a resume indicating the personnel or Subcontractor is qualified to perform that work. Resumes shall describe experience performing similar work.

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

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

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

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

- Proposed profit of Contractor's work effort as a fixed fee amount not to exceed 8% percent of Contractor's estimated direct hourly labor rates and overhead costs; and
- For work performed by all Subcontractors, proposed total mark-up for Contractor on Subcontractor's work effort as a fixed fee not to exceed 3% percent of Subcontractor's total labor charges (does not include Other Direct Costs (ODCs)).

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

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

**4.3.6 SBE Goals.** Upon completion of negotiations, Contractor shall provide Project Manager a memo describing the proposed SBE 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 goal for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's SBE goal memo, approve or deny the goal, and issue a memo to the SFMTA Project Manager. SBE goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in the Agreement.

**4.3.7 Notice to Proceed.** The SFMTA will issue and send to Contractor a written notice to proceed (NTP), Task Order number, and Purchase Order after verifying that sufficient funds are available to pay for the Task Order. Contractor shall not commence work

under any Task Order until it receives a corresponding NTP and Purchase Order from the SFMTA. Proposer shall use this Task Order number when submitting invoices to the SFMTA's project manager for payment under the Task Order.

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

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

**4.3.10 Presentations.** In the performance of assigned tasks, the Contractor, if requested by City, shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.

#### **4.4 Personnel.**

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

**4.4.2 Key Personnel.** The SFMTA selected Contractor in large part due to the particular experience and expertise of the Key Personnel listed below. Key Personnel designated as members of the Core Project Team are required to be engaged in work on this Contract for at least 75% of their time for the entire term of the Contract. Contractor shall not reassign Core Project Team members to other Projects or assignments without the express written approval of the SFMTA. If SFMTA's Task Order Request identifies specific specialist teams to participate in the task, Contractor shall advise SFMTA in their Task Order Proposal if any of the Specialist Team Leads listed below are unavailable to lead the specified task. The SFMTA may in turn require Contractor to provide a remedy and/or corrective actions (such as temporary substitution of the Specialist Team Lead with an equally qualified and experienced person) for such deviations. After a Specialist Team Lead has been identified in an issued Task Order, Contractor shall not substitute another person for the position without the express written approval of the SFMTA.

#### **Core Project Team**

[Employee's name], Project Manager

[List employees' names and positions]

### **Specialist Team Leads**

[Employee's name], Contract Management Lead

[Employee's name], Construction Manager

[Employee's name], Lead Engineer

[Employee's name], Lead Vehicle Engineer

[Employee's name], System Integration Lead

[Employee's name], Quality Assurance Lead

[Employee's name], Testing and Commissioning Lead

[Employee's name], Safety Lead

[Employee's name], Security Lead

[Employee's name], Post-Delivery, Maintenance and Support Lead

[Employee's name], Service and Operations Planning Lead

[List employees' names and positions]

**4.5 Current Workload and Available Resources.** The Contractor covenants that its current workload and the workload of its Subcontractors will not affect the commencement and the progress of the work under this Agreement. The Contractor shall have all the necessary professional, technical and support personnel, including those of the Subcontractors, available, ready and mobilized to perform actual work within two weeks of the receipt of NTP on a particular task. In addition, the Contractor shall make good faith efforts to have all contracts signed with Subcontractors within three weeks of NTP. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

**4.6 Transmittal of Work Product.** When requested by Agency's Project Manager, and after completion of each task and subtask, the Contractor shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its Subcontractors' work on this Agreement. The Contractor's Project Manager and applicable Specialist Team Leads shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to Agency.

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

If Contractor considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Task Order, the Contractor shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified in subsection 4.3.3 above.

#### **4.8 Subcontracting**

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

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

[Insert names of desired approved Subcontractors here.]

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

**4.9.1 Independent Contractor.** For the purposes of this Section 4.9, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor 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.

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

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



immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

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

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance**

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

(a) Commercial General Liability Insurance with limits not less than \$25,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$5,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than **\$2,000,000** each accident, injury, or illness.

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than **\$20,000,000** for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage, with limits of \$20,000,000 for each claim 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 Agreement and shall also provide coverage for the following risks:

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

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

(f) Cyber and Privacy Insurance with limits of not less than **\$20,000,000** per claim. Such insurance shall include coverage for liability arising from theft,

dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

### **5.1.2 Additional Insured Endorsements**

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

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

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

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

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

### **5.1.4 Primary Insurance Endorsements**

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

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

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

### **5.1.5 Other Insurance Requirements**

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

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this

Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

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

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

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to Subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or

agreement on Contractor, its Subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, Contractors and experts and related costs and City's costs of investigating any claims against the City.

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

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

**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.

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

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

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

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

## **Article 7 Payment of Taxes**

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

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

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

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

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

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

**7.3 Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations

Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

**8.1.1** . 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 may include any or all of the following, without limitation:

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

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

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

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

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

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

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

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

**8.1.6** 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:

- 3.6 Submitting False Claims
- 4.10 Assignment
- Article 5 Insurance and Indemnity
- Article 7 Payment of Taxes
- 10.10 Alcohol and Drug-Free Workplace
- 11.10 Compliance with Laws
- Article 13 Data and Security

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

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

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

**8.2.2** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses



incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

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

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

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

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

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

- 3.4.1 Payment Limited to Satisfactory Services and Delivery of Goods
- 3.3.10 Grant Funded Contracts - Disallowance
- 3.5 Audit and Inspection of Records
- 3.6 Submitting False Claims
- Article 5 Insurance and Indemnity
- 6.1 Liability of City
- 6.3 Liability for Incidental and Consequential Damages
- Article 7 Payment of Taxes
- 8.1.6 Payment Obligation
- 9.1 Ownership of Results

9.2	Works for Hire
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
Article 13	Data and Security

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

## **Article 9 Rights In Deliverables**

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

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

Contractor and its Subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

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

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

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

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

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

### **10.5 Nondiscrimination Requirements**

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

comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

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

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

## **10.6 Small Business Enterprise Program**

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

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

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

**10.7 Minimum Compensation Ordinance.** If 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 is required to 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 Reserved (Health Care Accountability Ordinance).**

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

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

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

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (a) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (b) a candidate for that City elective office, or (c) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any Subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies

that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

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

**10.13 Reserved. (Working with Minors)**

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

**10.14.1** Contractor agrees to comply fully with and be bound by all of the provisions of 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 Reserved. (Tropical Hardwood and Virgin Redwood Ban)**

**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: San Francisco Municipal Transportation Agency

1455 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Dan Howard, Train Control Upgrade Project Manager  
[dan.howard@sfmta.com](mailto:dan.howard@sfmta.com)

To Contractor: **[insert name of Contractor, mailing address, and e-mail address]**

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

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

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

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

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

## **11.6 Dispute Resolution Procedure**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative

decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

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

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

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

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

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

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



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

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

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

## **Article 12 SFMTA Specific Terms**

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

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

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

### **Article 13 Data and Security**

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

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

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

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

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

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

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

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

**13.5.2 Use of City Data and Confidential Information.** Contractor agrees to hold City Data received from, or collected on behalf of the City, in strictest confidence.

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

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

## **Article 14 MacBride and Signature**

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

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

<p><b>CITY</b></p> <p><b>San Francisco Municipal Transportation Agency</b></p> <hr/> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____</p> <p>Secretary, to the Board</p> <p>Board of Supervisors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____</p> <p>Clerk of the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____</p> <p>David F. Innis Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p><b>[company name]</b></p> <hr/> <p><b>[name of authorized representative]</b></p> <p><b>[title]</b></p> <p><b>[optional: address]</b></p> <p><b>[optional: city, state, ZIP]</b></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: <b>[Supplier Number]</b></p>
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[City Attorney's Document No.]

## **Appendices**

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

➔ **If you obtained an insurance waiver from the Risk Manager, or have other reason to include additional appendices, note here.**

➔ **In the footer, the page number should match the “of” number, such as “23 of 23.”**

## **Appendix A to Sample Agreement**

### **Scope of Services**

#### **1. Description of Services**

The Consultant shall provide as-needed specialized consulting services supporting the SFMTA in the following categories:

1. Project Management
2. Contract Management
3. Construction Management
4. Design and Engineering
5. System Integration
6. Quality Assurance
7. Testing
8. Safety and Security
9. Commissioning
10. Post-Delivery
11. Operations and Maintenance

The types of services which comprise these categories are described in the following sections A through K. Additional services are also described in Section L (“Other Services”). These sections reference the Supplier Contract Specifications and other Project documents, copies of which are included in the Reference Materials. All references to documents not included in this Agreement refer to the most current version of those documents provided to Consultant at the time of execution of the Task Order.

All services described in this Agreement will be performed under Task Orders. Each year, the SFMTA will issue a Task Order covering all the Consultant services SFMTA envisions will be needed for the year. SFMTA may at any time issue additional Task Orders to cover emerging needs not covered in the annual Task Order. All Task Orders will be broken down into sub-tasks matching the categories of services described in Sections A through L. Individual Task Orders will be tailored to the circumstances and therefore each Task Order may not include every category listed. However, the SFMTA will include category A (Project Management Support) in each annual Task Order which is designed to describe the activities of Consultant’s core Project Team. Task Orders may specify Deliverables or may specify the provision of Consultant staff on a time and materials basis.

The Consultant and the SFMTA shall agree on the services and level of effort required to deliver the scope of each Task Order. The Parties shall agree on a schedule, including timelines for submission of any Deliverables, and include this schedule in the Task Order. The Consultant

shall dedicate the resources necessary to provide the services described the Task Order for the entire term described therein.

## **A. Project Management Support**

The Consultant will support the SFMTA in the day-to-day execution of the CBTC Project. Deliverables and services may include the following:

### **1. Project Planning Support**

Assist SFMTA staff with developing and maintaining the Project Management Plan and other CBTC Project plans, such as the Concept of Operations and Maintenance, System Engineering Management Plan, Systems Integration Plan, Failure Management Plan, Vehicle and Wayside Integration Plans, Reliability, Availability, and Maintainability Plan, including all related and supporting management documents as described in the Supplier Contract Specifications.

### **2. Progress Reports**

Assist SFMTA staff with writing reports that summarize the progress of project activities. The reports will 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, QA 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, or other review sessions.

### **4. Documentation**

Prepare documentation and correspondence according to the procedures in the Project Management Plan (such as letters, reports, and presentations).

### **5. Tracking Systems**

Set up and maintain systems to track all Project information which allows a Project to be effectively managed. Items to be tracked include correspondence, project decisions/actions, and change orders.

### **6. Stakeholder Outreach**

Draft presentations, reports, and responses to requests from stakeholders, such as the FTA, state and local funding agencies, internal SFMTA stakeholders, elected officials, and the public.

## **B. Contract Management Support**

The Consultant will provide staff to support the SFMTA Project Manager in managing the contracts related to the Project, including performing tasks such as:

### **1. Contract Management Support**

Support SFMTA oversight and enforcement of the CBTC System Supplier and/or Installer contracts, including performing industry outreach and surveys; and verifying requirements, change orders, deliverables, claims, and payments.

### **2. Schedule Management Support**

Assist SFMTA with development and maintenance of the overall schedule for the Project as needed. Project schedule requirements are described in Supplier Contract Specifications Section 3.2.4 and the Project Management Plan. In addition, support integration of the Train Control Upgrade Project schedules into and coordination with other projects, such as Muni Forward, Next-Generation Customer Information System, Siemens LRV4 Project, traffic signal and transit signal priority projects, and maintenance-of-way projects.

### **3. Compliance**

Conduct reviews as specified in the task order to verify that the system designs, software, 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 CBTC 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 change orders (in accordance with FTA requirements, as applicable); identify responsibilities for the changes, and advise on any resulting impacts in scope, schedule, and budget.

### **5. Change Order Support**

- a. Assist the SFMTA with scoping and development of change orders to the CBTC System Supplier, Installer, or third-party vendor contracts.



- b. Assist the SFMTA with evaluating Change Order Requests (CORs) initiated by the Train Control System Supplier, as described in Appendix E to the Supplier Agreement, or initiated by Installers, or other third-party vendors. Perform analyses such as cost-benefit analyses, feasibility studies, etc to help SFMTA make decisions on whether to accept CORs.
- c. Recommend mitigations of the effects of change orders on the Project schedule, including setting milestone dates for tasks, coordination with the overall Project schedule, and management of SFMTA and Supplier resources.
- d. Support the contract modification process for the Supplier and Installer contracts, including preparing independent cost estimates, preparing reports and presentations supporting the Board approval.

## **C. Construction Management Support**

The Consultant will provide staff to support the SFMTA Project Manager in managing issues that arise during installation of the CBTC System and related installation and construction activities, including performing tasks such as:

### **1. Construction Management Support**

- a. Provide staff to support SFMTA oversight of construction activities. Ensure that the Supplier and Installers are aware of and comply with all SFMTA and CPUC regulations and requirements related to installation, track access, and construction.
- b. Advise the SFMTA in its managing the relationship between the CBTC System Supplier and the Installers.
- c. Assist the SFMTA in ensuring that SFMTA-furnished items as described in Supplier Contract Specifications Section 9 such as vehicles, wayside infrastructure, network infrastructure, and fiber optic cable are prepared and quality-checked prior to CBTC system installation.
- d. Assist in communicating Project needs and timing to SFMTA staff where SFMTA-provided elements are on the critical path for installation.
- e. Perform field surveys using licensed surveyors as needed.

### **2. Migration Plan**

Provide staff to support the SFMTA during the planned migration of the Thales Seltrac ATCS to the new CBTC, including reviews of the cutover and migration plans to ensure that they conform to the SFMTA's requirements and expectations. This effort will include tasks such as helping manage the CBTC System Supplier and/or Installer's access to SFMTA tracks, tunnels,

rail vehicles or other SFMTA resources, and helping manage impacts to routing operations and maintenance activities.

### **3. 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.

### **4. Construction Scheduling**

Assist in coordinating installation activities with SFMTA's operations and maintenance departments. Assist the CBTC System Supplier and Installers in maintaining an up-to-date installation calendar of activities that looks at least one month ahead and deconflicts CBTC installation activities with revenue service, maintenance activities, and other projects in the Project area. Project schedule requirements are described in Supplier Contract Specifications Section 3.2.4 and the Project Management Plan.

### **5. Change Management Oversight**

- a. Review the Supplier'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.
- b. Maintain the Project's change control, configuration management, and document management systems, as directed by the SFMTA Project Manager.

## **D. Design and Engineering**

Consultant shall provide technical experts to support the design and engineering functions of the project, support SFMTA's review of written submissions and communications such as RFIs and CDRLs, and participate in design reviews. This may include performing tasks such as:

### **1. Augment SFMTA's engineering staff**

Provide experienced train control and vehicle engineers to augment SFMTA's project engineering team, including a principal engineer to act as the Owner's Engineer for the CBTC system. These staff would be integrated into SFMTA project organizational structure.

### **2. Review and comment on Supplier CDRL Items.**

Review CDRL submittals for compliance with the Supplier Contract Specifications and recommend disposition to the SFMTA. Draft SFMTA responses to CDRL submittals and facilitate meetings between the SFMTA and its Supplier to drive consensus.

### **3. Review and comment on RFIs**

Review RFIs from the CBTC System Supplier, Installer, or third-party vendors related to the CBTC system, and work with SFMTA staff to develop a response.

### **4. System Design Reviews**

Attend systems design reviews, such as CDR, PDR, FDR and CFDRs. Provide technical advice to SFMTA during design reviews and verify that the CBTC System is designed according to the SFMTA's requirements and expectations.

### **5. Issue Resolution**

- a. Assist the SFMTA in managing issues which arise during the project by conducting research and providing advice concerning industry best practices, required standards, and federal, state, and local requirements.
- b. Advise SFMTA on best course of action during disputes between SFMTA and Supplier or Installers. Provide reports or presentations as requested by the SFMTA.
- c. Work with the SFMTA Project team to drive consensus among internal stakeholders to develop an agreed SFMTA position on issues as they arise.

### **6. Change Control Committee Support**

Review submittals from the CBTC System Supplier to the Rail Change Control Board, the Technology Change Advisory Board, and the CBTC Change Control Committee, and provide technical advice and guidance to those committees regarding the proposed changes.

## **E. System Integration Support**

Consultant shall provide technical experts to support SFMTA's integration of the CBTC System with other SFMTA systems, including data communications systems, passenger information systems, vehicle telematics systems, asset management systems, roadway traffic signal systems, computer-aided dispatch (CAD) systems, scheduling systems, signaling systems, switch machines, interlockings, and their associated equipment. This may include performing tasks such as:

### **1. Design and Engineering Support for System Integration**

Review design submittals from the CBTC System Supplier and third-party system vendors, and advise the SFMTA of potential integration issues, discontinuity between the system design and SFMTA's plans such as the Concept of Operations and Maintenance, or potential design deficiencies. The Consultant shall suggest solutions in the design phase so designs may be corrected with a minimum of delay and expense to the Project, and ensure that the SFMTA's integration objectives are met, as stated in the Project Integration Management Plan.

## **2. System Integration Design Reviews**

Attend systems integration reviews and provides comments to SFMTA which are focused on ensuring that the CBTC System performs according to the SFMTA's requirements and expectations. Comments shall include highlighting interface issues with the LRV4 vehicles and the SFMTA's existing systems and projects, such as Muni Forward, Cubic Umo IQ Next-Generation Customer Information System, Conduent OrbCAD / AVL system, Trapeze scheduling system, database and communications systems, traffic signal and transit signal priority projects, and Maintenance-of-Way projects. This task includes evaluating and commenting on any responses to Consultant's comments.

## **3. Onboard Systems Integration**

Support SFMTA staff in the integration of the new CBTC system with the other systems present on the SFMTA's light rail vehicles (LRVs). Provide recommendations to the SFMTA relating to the integration of the new system with existing vehicle systems when there is conflict between the Supplier, Vehicle Manufacturer, and Installer.

## **4. Test Integration Solutions**

Assist the SFMTA in testing its integration solutions for conformance to functional requirements. Assist with developing testing and validation plans for SFMTA-led integrations. Provide test resources as required.

## **F. Quality Assurance Support**

The Consultant will provide Quality Assurance (QA) oversight services as to the quality of the Supplier and Installers' work and equipment, and the Supplier and Installers' compliance with contract specifications, designs and requirements. QA activities and deliverables may include:

### **1. QA Program Oversight**

Review CBTC Supplier's QA programs to ensure that the CBTC Supplier meets the requirements in Supplier Contract Specifications Section 5. Provide advice and recommendations to SFMTA QA oversight team regarding actions or communications they should take with respect to the Supplier's QA programs.

### **2. QA Installation Oversight**

Conduct checks, as necessary, to ensure that quality records are maintained throughout the installation process. Witness installation activities, Installer QA actions and Post-Installation Check-Out (PICO) tests. Inspect installed components as directed by SFMTA. Assess quality trends and review with SFMTA staff and the Supplier to determine any corrective actions.

### **3. QA Change Management Oversight**

- a. Review the Supplier'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.
- b. Maintain the Project's change control, configuration management, and document management systems, as directed by the SFMTA Project Manager.

### **4. Receiving Inspection**

Provide incoming or receiving inspection at the SFMTA delivery location to determine whether equipment has been damaged in transport or at any other time. Once equipment has been delivered to the SFMTA but before it is accepted, Consultant shall perform a final audit to verify that the necessary documentation is included, highlighting any discrepancies to the SFMTA Project Manager.

### **5. Audits**

Support SFMTA audits of Supplier and Installers in accordance with SFMTA's QA plans and the requirements in the respective contracts, such as Supplier Contract Specifications, Section 5.

### **6. Punchlist Support**

Establish, manage and maintain punchlists on behalf of SFMTA for Supplier items due to be completed and resolved in each phase. Record and document bugs and issues noted by SFMTA and Consultant during testing and operations as part of the punchlist. Help Supplier understand the nature of the punchlist items and work with Supplier to resolve them.

## **G. Test Program Support**

The Consultant shall provide test program oversight services to ensure that the train control system meets the requirements in the Supplier Contract Specifications, and any applicable federal, state and local requirements. Activities and deliverables may include:

### **1. Test Documentation Review**

Review and recommend for acceptance the Supplier's test and evaluation plans and procedures for all materials, components, subsystems, and completed work as described in Supplier Contract Specifications Section 31.

### **2. Test Witnessing**

Witness design, software tests or demonstrations, factory tests, site acceptance tests, electrical/megger tests, vehicle tests, PICO tests, acceptance and commissioning tests, as

required, including tests at the Supplier's or its subcontractors' facilities, the SFMTA site, or third-party location. Provide SFMTA with independent reports corroborating the Supplier's test report and explain any discrepancies.

### **3. Schedule Management**

Coordinate testing activities requiring the use of SFMTA revenue vehicles and/or right-of-way with the SFMTA's operations and maintenance departments. With the CBTC System Supplier and/or Installer, maintain an up-to-date testing calendar of activities that looks at least one month ahead and deconflicts CBTC test activities with revenue service, maintenance activities, and other projects in the Project area. Project schedule requirements are described in Supplier Contract Specifications Section 3.2.4 and the Project Management Plan.

### **4. System Acceptance**

Support the SFMTA in acceptance activities, documenting discrepancies identified during testing or in operation during pilot or warranty periods. Assist SFMTA in developing a punchlist for Installers and Supplier prior to SFMTA Conditional or Final Acceptance as described in Supplier Contract Specifications Section 8.

### **5. Operational Testing**

- a. Support SFMTA-directed operational testing as described in Supplier Contract Specifications Section 31.8 and to confirm compatibility with the SFMTA's existing system, facilities, and equipment; assist with train controller / operator / maintenance technician orientation.
- b. Assist with start-up and commissioning of CBTC system sections, including integration and pre-revenue "dry-run" testing, developing test scenarios and procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses.

## **H. Safety and Security Program Support**

The Consultant shall support safety certification, including monitoring Supplier and Installers' safety programs, and supporting the development of required documentation to obtain CPUC certification of the CBTC System as described in the SFMTA CBTC Safety and Security Management Plan and Supplier Contract Specifications Section 6. The scope of work may include:

1. Research current relevant safety standards and review safety plans for compliance.
2. Review the Project System Safety Program.
3. Review the Supplier's hazard analyses.

4. Evaluate the CBTC Safety and Security Management Plan and CBTC Safety and Security Certification Plan for conformance with all applicable rules and regulations, suggest edits to ensure compliance with the latest safety standards.
5. Participate in the Safety and Security Certification Review Committee as a technical advisor, enforce compliance with established safety plans and drive consensus on solutions.
6. Support SFMTA in maintaining the Audit Conformance Checklist (ongoing).
7. Review the safety requirements.
8. Audit implementation of safety requirements.
9. Audit resolution of hazards (ongoing).
10. Perform preliminary and system hazard analyses, failure modes and effects analyses, hazard level classification, and single-point-of-failure analyses.
11. Develop safety checklists, conduct necessary safety verifications, and prepare mitigation plans as necessary.
12. Provide information, guidance and recommendations for changes to the safety plans and program based on Consultant industry experience and the latest applicable safety standards and regulatory requirements.

## **I. Commissioning and Start-up Activities**

The Consultant shall support SFMTA commissioning and start-up activities prior to the start of revenue service for each phase of the CBTC System installation. 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. Provide staff to support the training program, including testing and acceptance of the training simulators as identified in the Supplier Contract Specifications Section 31.
4. Provide staff to support revenue readiness activities, including maintenance shop readiness, and verification that the train control system design will meet its operational requirements.
5. Provide staff to support activities relating to the cutover of the ATCS system to the CBTC system as described in the Supplier Contract Specifications Section 8.3.2.6, including participating in the development of cutover plans, technical support, scheduling and sequencing, and management of activities in the field.
6. Provide staff to support coordination activities with interrelated projects, such as the Cubic NextBus Next-Generation Customer Information System, OrbCAD / AVL system, Trapeze scheduling system, database and communications systems, traffic signal and transit signal priority projects, and Maintenance-of-Way projects.

## **J. Post-Delivery Support**

Consultant shall assist the SFMTA in managing the Supplier's provision of CBTC Support Services as described in the Supplier Contract Specifications Section 32, as required by SFMTA. This contract will cover all post-delivery support requirements, including warranty administration, regular software and/or hardware updates, support requests and tertiary maintenance. Activities and deliverables may include:

1. Assist with 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 of the CBTC System and work with the SFMTA and the Supplier to assure compliance of the train control system with performance requirements specified in the Supplier Contract Specifications Section 30 and Appendix I to the Supplier Sample Agreement.
4. Assist in the set-up, execution, administration, and monitoring of Supplier and Installer warranty programs as defined in the Supplier Contract Specifications Section 13, and the Installer contracts, including identification and resolution of defects.
5. Review the SFMTA's preventive maintenance plans and maintenance policies, practices and procedures to confirm they are clearly defined, complete and meet SFMTA's obligations under the Supplier Contract.
6. Alert SFMTA when different components, subsystems, sections, or installations are entering or leaving a warranty period.
7. Assist in the set-up, administration, and monitoring of CBTC data in asset management programs such as SFMTA EAMS (Enterprise Asset Management System), including configuration, integration with CBTC CMMS, and data entry necessary (such as asset definitions) necessary to set up the system for regular use by SFMTA maintenance.

## **K. Operations and Maintenance Support**

Consultant shall provide other services as needed by the SFMTA to support the maintenance and operation of the train control system for the term of this contract. Activities may include:

1. Review plans, checklists and procedures related to system operation and preventive maintenance.



2. Perform audits of preventive maintenance and inspections performed by the SFMTA. Produce audit reports, as needed, to highlight areas that the SFMTA needs to address in order to meet its obligations under the Supplier Contract.
3. Evaluate and assist with the implementation of CBTC Supplier-led adaptive maintenance methods.
4. Evaluate the Supplier's CBTC Product Roadmap and Obsolescence Management Plan, as defined in the Supplier Contract Specifications Sections 4.2.1 and 14, highlight potential conflicts or trouble areas, and recommend modifications.
5. Assist SFMTA staff with data analysis to verify system performance is meeting requirements specified in the Supplier Contract Specifications Section 30.
6. Review and suggest edits to SFMTA standard operating procedures (SOPs) as necessary to accommodate the capabilities of the CBTC System.
7. Assist with the development or updating of training, operating practices, and procedures for maintenance and operations staff.
8. Provide expert opinions on modifications or system upgrades to improve operations and service delivery or keep pace with the CBTC Product Roadmap.
9. Perform strategic consulting, analysis, and recommendations for addressing key operations issues. Recommend changes in operations plans, staffing, workflow and procedures to best take advantage of the CBTC system's capabilities.
10. Oversight of maintenance support services provided by Supplier as described in the Supplier Contract Specifications Section 32, such as review of root cause analyses and other reports, confirming parts delivery and inventory provided as specified in the Supplier Contract, reviewing new releases, obsolescence plans, and product roadmaps.

## **L. Other Services**

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

1. Advise the SFMTA on key issues regarding vehicle and equipment installation, including compliance, systems integration, and deviation from Contract requirements.
2. Assist with 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. Suggest plans for CBTC-related upgrades to infrastructure and facilities, such as the yard layout, training rooms, equipment rooms, control centers, maintenance facilities, traffic signals and network infrastructure.

4. Provide suggestions for long-term system support plans, including options, timing and procurement strategies required to maintain the system in both a state of good repair and to keep pace with the advancement of technology.
5. Collect data and perform field observations, such as traffic counts and pedestrian or ridership counts.
6. Assist the Agency's Communications & Marketing Division with graphics for maps, posters, reports, one-pagers, marketing material, and other documents.
7. Perform data analyses pertaining to service planning activities, including before/after comparisons and trends.
8. Provide staff to assist the Agency's Communications & Marketing Division with outreach efforts, including facilitating public meetings and providing logistical support.
9. Produce or assist with peer reviews and best practice reviews for train control-related operations and maintenance.
10. Provide staff to assist with asset management of train control equipment, to include data entry in the asset management system.
11. Produce or assist with the production of operational scenario models. Models may take into account train control management schemes, service plans, available ridership, and grade or route data.
12. Provide the SFMTA with the most up-to-date copies of engineering codes and standards such as those referenced in the Supplier Contract Specifications Section 7 and advise SFMTA when updates to those standards affect design requirements.
13. Advise SFMTA on developments in the CBTC industry, including producing market analyses, advising SFMTA on updates to state and federal laws, rules and regulations, such as FTA or CPUC regulations which affect the Project or the CBTC System design.

***All written Deliverables shall be submitted electronically in PDF format and shall be in a ready-to-print format including all images, diagrams and final formatting in the document. Submission may be over email, or in the event of large file sizes, over a Microsoft Sharepoint folder or other shared folder hosted by SFMTA.***

## **2. Evaluation of Work**

Unless a different evaluation process is specified in a Task Order, Contractor shall submit a draft of each written Deliverable to the SFMTA for review. The SFMTA will review and return the accepted draft with comments after a minimum two-week review period. Contractor will make changes to the document to address SFMTA's comments and submit the revised document as a final draft. SFMTA will then indicate whether the document has been accepted.

SFMTA may also reject either the draft or final document as unsatisfactory. Contractor may resubmit rejected Deliverables for acceptance, but SFMTA will not pay Contractor for any additional rework Contractor performed on the Deliverable after the document was rejected.

SFMTA may offer feedback on the performance of Contractor's personnel assigned to this Contract, such as those personnel assigned to augment SFMTA's staff, for Contractor to consider. In addition, Contractor may solicit feedback from SFMTA on the performance of its staff, such as to facilitate Contractor's internal performance reviews.

### **3. Location of Work**

Unless a location is specified in a Task Order, Contractor may perform the Services remotely. SFMTA may require Contractor to attend meetings in-person at SFMTA's offices or perform on-site work on SFMTA's right of way or in its facilities. SFMTA expects the Core Project Team to be available to meet in-person any time during the Contract Term. Accordingly, travel expenses for Core Project Team members to the San Francisco Bay Area will not be authorized. Travel expenses for Specialist Team Leads, and other team members with specialized experience who need to be present on-site, to travel to San Francisco shall be authorized by SFMTA prior to the travel on a case-by-case basis, depending on the need. Travel expense reimbursements shall follow the SFMTA travel guidelines. The Contractor shall schedule all work and meetings according to business hours in the Pacific Time Zone unless specified in the Task Order.

### **4. Services Provided by Attorneys**

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

### **5. Reports**

Contractor shall submit written reports as requested by the SFMTA. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted electronically in PDF format and shall be in a ready-to-print format including all images, diagrams and final formatting in the document. Submission may be over email, or in the event of large file sizes, over a Microsoft Sharepoint folder or other shared folder hosted by SFMTA.

### **6. Department Liaison**

*In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be the Train Control Upgrade Project Manager.*

## **Appendix B to Sample Agreement**

### **Calculation of Charges**

To be completed during final contract negotiations based on Contractor's proposal using Appendix F of the RFP.

**Appendix C to Sample Agreement**

**TASK ORDER REQUEST FORM**

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

**APPROVALS**

**Requested by:** \_\_\_\_\_ **Date** \_\_\_\_\_  
Name, Title

**Approved by:** \_\_\_\_\_ **Date** \_\_\_\_\_  
Name, Contract Manager

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

**Reviewed by:** \_\_\_\_\_ **Date** \_\_\_\_\_  
Virginia Harmon, Contract Compliance Office

**Approved by:** \_\_\_\_\_ **Date** \_\_\_\_\_  
Division Director, Title

**Proposed Staff and Budget:**

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

**Grand Total This Task:                   \$000,000**

**Notes:**

**Approved by Requestor:**

**Signature :**

**Date:**



## Appendix D to Sample Agreement

### FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

#### I. DEFINITIONS

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

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

## II. FEDERAL CHANGES

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

## III. ACCESS TO RECORDS

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

## IV. DEBARMENT AND SUSPENSION

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

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

See Appendix D, Certification Regarding Debarment, Suspension, and Other Responsibility Matters

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

**V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

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

**VI. CIVIL RIGHTS**

- A. Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the
- B.** Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- C. Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
  - 1. Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49

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

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

## VII. DBE/SBE ASSURANCES

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

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material

breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

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

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.
- B.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C.** The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

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

- 2. Federal License.** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:

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

provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

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

or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

#### **XI. ENERGY CONSERVATION REQUIREMENTS**

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

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

**A.** The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

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

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

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

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

#### **XIV. PRIVACY**

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



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

**XV. DRUG AND ALCOHOL TESTING**

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

**XVIII. BUY AMERICA**

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

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

General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C.

5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

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

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

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

**XX. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS**

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

issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**XXI. RECYCLED PRODUCTS**

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

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

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

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

**XXIII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

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

- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a Project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**XXIV. FLY AMERICA**

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

**XXV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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

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

- A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
  - 1. **General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out

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

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

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

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

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

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

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

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by

23 U.S.C. § 512, FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

**XXVIII. TEXTING WHILE DRIVING; DISTRACTED DRIVING**

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

**XXIX. SEAT BELT USE**

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

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

Certification Regarding Lobbying required (See Appendix E).

**XXXI. PROMPT PAYMENT**

**A.** 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 subcontractors. Unless the prime Contractor notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subcontractor. Within five working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractors.

**B.** Contractor may withhold retention from subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within 30 days of City’s payment of retention to Contractor for satisfactory completion of all work required of a subcontractor, Contractor shall release any retention withheld to the subcontractor. Satisfactory completion shall mean when all the tasks called for in the subcontract with subcontractor have been accomplished and documented as required by City. If the Contractor does not pay its subcontractor as required under the above paragraph, it shall pay interest to the subcontractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

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

As provided by 49 U.S.C. § 5325(k):

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

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

B. Contractor also assures that its subcontractor will:

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