

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.5**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Approving Contract No. 2020-11 As-Needed Information Technology (IT) and Intelligent Transportation Systems (ITS) Engineering Services with Auriga Corporation, Contract No. 2020-12 As-Needed IT and ITS Engineering Services with Diamond Technology Inc., and Contract No. 2020-13 As-Needed IT and ITS Engineering Services with Parsons Transportation Group Inc., for an amount not-to-exceed \$1,500,000 for each contract and a term of three years with two options to extend two years each up to an additional four years.

**SUMMARY:**

- On March 30, 2020, the SFMTA issued a Request for Proposals (RFP) for a range of specialized information technology (IT) and intelligent transportation systems (ITS) engineering services (Services) to support the planning, design, and implementation phases of locally funded Technology capital projects and operational tasks.
- The Services include project management, ITS architecture and engineering support, analytical studies, technical gap analysis, oversight of system verification and validation, systems engineering and technology-related activities, and support for the deployment and commissioning of new system features, updates, and upgrades.
- The SFMTA seeks to award three separate contracts for these Services to Auriga Corporation (Auriga), Diamond Technologies (Diamond), and Parsons Transportation Group (PTG), each contract for a not-to-exceed amount of \$1,500,000 and a term of three years with two options to extend an additional four years.
- The SFMTA has established a 20% Local Business Enterprise (LBE) subcontracting participation requirement for each contract.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract No. 2020-11 with Auriga Corporation
3. Contract No. 2020-12 with Diamond Technology
4. Contract No. 2020-13 with Parsons Transportation Group Inc.

**APPROVALS:**

DIRECTOR  \_\_\_\_\_

SECRETARY  \_\_\_\_\_

**DATE**

November 10, 2020

November 10, 2020

**ASSIGNED SFMTAB CALENDAR DATE:** November 17, 2020

**PURPOSE**

Approving Contract No. 2020-11 As-Needed Information Technology and Intelligent Transportation Systems Engineering Services with Auriga Corporation, Contract No. 2020-12 As-Needed IT and ITS Engineering Services with Diamond Technology Inc., and Contract No. 2020-13 As-Needed IT and ITS Engineering Services with Parsons Transportation Group Inc., for an amount not-to-exceed \$1,500,000 for each contract and a term of three years with two options to extend two years each up to an additional four years.

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

This item supports the following Strategic Plan Goals:

Strategic Goal 1: Create a safer transportation experience for everyone.

Objective 1.3: Improve security for transportation system users.

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

Objective 2.3: Manage congestion and parking demand to support the Transit First Policy.

Strategic Goal 4: Creates a workplace that delivers outstanding services.

Objective 4.2: Improve the safety, security, and functionality of SFMTA work environments.

This item supports the following San Francisco Charter Section 8A.115 Transit-First Policy:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

**DESCRIPTION**

On March 30, 2020, the SFMTA issued an RFP for as-needed IT and ITS engineering services to support the planning, design, and implementation phases of locally funded technology projects and tasks to replace outdated and upgrade existing IT and ITS systems. On the same date, the SFMTA issued a two RFPs for similar services to support federally funded projects, the contracts for which are addressed in a separate calendar item.

The scope of the Services covers the following service categories:

- ITS Project Management
- IT Network Infrastructure
- Data and Analytics Infrastructure
- SharePoint Administration and Migration
- Java / Middleware Engineering
- Salesforce Development and Administration

The purpose of these Services is to improve efficiency and ease-of-use across the SFMTA's IT and ITS systems, which include the fiber optics network that provides the internal communication

backbone of the Muni Metro systems, and the communication-based train control system that will control light rail vehicle operations within the Metro subway.

The Services include project management, ITS architecture and engineering support, analytical studies, technical gap analysis, oversight of system verification and validation, systems engineering and technology-related activities, and support for the deployment and commissioning of new system features, updates, and upgrades.

Examples of projects the Services may support include: replacement of the SFMTA’s outdated core network switches and establish a foundation to support Transit Ops and the new communication-based train control (CBTC) system; implementation of video-based safety program to provide safety records through monitoring operator performance; implementation of Cellular LTE access to the fleet through upgrading routers in vehicles to 4G; and replacement of the existing real-time passenger information system with a new real-time vehicle arrival and service update system.

On May 22, 2020, the SFMTA received six proposals from the following vendors:

- Auriga Corporation
- Diamond Technology Inc.
- DPP Tech
- Nisum Technologies Inc.
- Parsons Transportation Group
- Staffactory, LLC.

The SFMTA formed a technical evaluation panel consists of Technical Program Managers, Departmental Chief Information Officer, and Technology Infrastructure Manager to evaluate the written proposal and oral presentation of all six proposers. Based on the evaluation and scoring of proposals received in response to the RFP, the SFMTA selected Auriga, Diamond, and PTG as the highest-scoring and most qualified proposers; the SFMTA seeks to award a separate contract to each firm for a total of three contracts. Each contract for a not-to-exceed amount of \$1,500,000, an initial term of three years with two options to extend of two years each up to an additional four years, and a 20% Local Business Entity (LBE) subcontracting participation requirement.

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

<b>Auriga Corp</b>	<b>Subcontractors</b>	<b>Services</b>
	Systra Consulting Inc.	Train Control CBTC, ITS Support
	Gannett Fleming, Inc.	Train Control, CBTC, ITS Support
	Lea+Elliot, Inc.	Train Control, CBTC, IT, and ITS Support
	Slalom, LLC	SharePoint support
	Cornerstone Consulting and Technology Inc. (Local Business Enterprise)	IT support
	Countervail Engineering (Minority Business Enterprise)	Train control, radio & data communications support
	Hoekstra Consulting (Small Business	ITS architecture, data analytics,

	Enterprise)	data integration support
	NSI Engineering Inc. (Woman-Owned Disadvantage Business Enterprise)	QA/QC, Infrastructure support

<b>Diamond Technology, Inc.</b>	<b>Subcontractors</b>	<b>Services</b>
	Tarjuna Systems Inc. (Minority Business Enterprise)	Rail transit systems, ITS, communications train control related services
	Essention Group, Inc. (Minority Business Enterprise)	IT services
	Accend Network	Network support services
	Flex Analytics, Inc.	IT and data services
	Quality Engineering, Inc.	QA/QC support
	Soteria Company, LLC	Security and Safety certification

<b>Parson Transportation Group</b>	<b>Subcontractors</b>	<b>Services</b>
	Charistech Engineers & Consultant, LLC.	Quality assurance and control
	Countervail Engineering (Minority Business Enterprise)	ITS project support
	Delta computer solutions, Inc. (Minority Business Enterprise)	IT network infrastructure support
	Iteris, Inc.	ITS project support
	Lea & Elliott, Inc.	ITS project support
	Systems Integration Resources, Inc. (Woman-Owned Business Enterprise)	SharePoint administration and migration support
	TransSIGHT LLC	Java / Middleware engineer support, data and analytics infrastructure support
	Transit Systems Engineering, Inc.	ITS project support
	West Coast Consulting Group (Woman-Owned Business Enterprise)	Salesforce development and administration support

Under these contracts, the SFMTA will have immediate access to pre-qualified vendors with specialized IT and ITS engineering expertise. This will ensure timely deployment of vendors to support the agency’s IT and ITS projects on an as-needed basis. These contacts also provide the SFMTA the flexibility to acquire technical support and expand the agency’s resource capacity at various phases of project implementation without impacting the delivery timeline for the project. In addition, the SFMTA can manage labor budgets with more cost certainty because pre-negotiated labor rates are established for the terms of the contracts.

Each of the three contracts establishes the terms and conditions, as well as, labor rates with each vendor. The scope of services, deliverable schedule, and cost of specific task orders will be negotiated in the individual task orders. Task orders will be issued and assigned to vendor based on the best qualified consultant at the time the service is needed.

## **STAKEHOLDER ENGAGEMENT**

To develop the scope of Services for the three contracts, staff consulted the SFMTA Technology Division and incorporated their specific business requirements.

Staff did not perform public outreach in connection with the three contracts because the Services are as-needed technical engineering services that will not have an impact on the environment or the public.

## **ALTERNATIVES CONSIDERED**

An alternative to awarding as-needed contracts for the Services is to procure separate contracts for each scope of work or for specific projects or tasks as the need arises. This alternative is inefficient and would likely negatively impact the delivery schedule for the SFMTA's IT and ITS projects, requiring coordination of various internal resources to develop and generate task-specific RFPs, and separate proposal evaluations and contract negotiations. Having as-needed contracts with pre-qualified vendors provides the SFMTA the flexibility to obtain timely as-needed support from pre-assessed resources who have the required expertise to execute the task.

Another alternative is to use the Office of Contract Administration's (OCA's) Technology Marketplace contracts. The OCA has negotiated contracts with technology vendors to provide technical support services to various City departments. These services, however, are limited in scope and require processing fees in addition to the vendors' base pricing, which diminishes cost efficiency. Additionally, the Technology Marketplace's approved vendors do not have the specific skills related ITS that the SFMTA requires.

Another alternative is not to procure the Services, in which case the SFMTA must rely on internal resources to deliver IT and ITS infrastructure projects. Due to the limited availability of current staffing resources it may potentially delay the delivery schedule for these projects.

There is no immediate funding impact related to this calendar item. This item only authorizes the SFMTA to establish contracts with a bench of pre-qualified vendors for a total contract value not-to-exceed \$4,500,000. Staff will develop a funding plan for each task order it issues under these contracts. The Services will be funded from the budgets of each project or divisional operating fund.

## **ENVIRONMENTAL REVIEW**

On October 21, 2020, the SFMTA, under authority delegated by the Planning Department, determined that Contract Nos. SFMTA 2020-11, 2020-12, and 2020-13 for As-Needed Informational Technology and Intelligent Transportation System Professional Services are not "projects" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

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

On April 1, 2019, the Civil Service Commission approved Contract number #49604-18/19 for As-Needed Intelligent Transportation System Engineering and Related Information Technology Services establishing a not-to-exceed amount of \$9,000,000. On August 27, 2019, a modification to #49604-18/19 was approved to increase the not-to-exceed amount to \$12,000,000. The approval did not limit the number of contracts awarded to perform the Services.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors approving Contract No. 2020-11 As-Needed Information Technology and Intelligent Transportation Systems Engineering Services with Auriga Corporation, Contract No. 2020-12 As-Needed IT and ITS Engineering Services with Diamond Technology Inc., and Contract No. 2020-13 As-Needed IT and ITS Engineering Services with Parsons Transportation Group Inc., each contract for an amount not-to-exceed \$1,500,000 and a term of three years with two options to extend two years each up to an additional four years.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, On March 30, 2020, the SFMTA issued an RFP for as-needed information technology (IT) and intelligent transportation systems (ITS) engineering services to support the planning, design, and implementation phases of locally funded projects and tasks to replace outdated and upgrade existing IT and ITS systems; and,

WHEREAS, Locally funded projects and tasks include the replacement of various outdated IT and ITS systems to improve efficiency and ease-of-use; and,

WHEREAS, The scope of Services to support these projects and tasks include ITS Project Management, IT Network Infrastructure, Data and Analytics Infrastructure, SharePoint Administration and Migration, Java / Middleware Engineering, Salesforce Development and Administration; and,

WHEREAS, Based on the evaluation and scoring of proposals received in response to the RFP, the SFMTA selected the following three contractors as the highest-scoring and most qualified proposers: Auriga Corporation, Diamond Technology Inc., and Parsons Transportations Group Inc; and,

WHEREAS, The SFMTA seeks to award a separate contract each contractor, each contract for an amount not to exceed \$1,500,000, an initial term of three years with two options to extend of two years each up to an additional four years, and a Local Business Entity (LBE) subcontracting participation requirement of 20%; and,

WHEREAS, The SFMTA selected three contractors to establish a bench of pre-qualified vendors with specialized technical expertise that can be deployed quickly to support the agency's IT projects on an as-needed basis; and,

WHEREAS, On October 21, 2020, the SFMTA, under authority delegated by the Planning Department, determined that Contract Nos. SFMTA 2020-11, 2020-12, 2020-13 As-Needed Informational Technology and Intelligent Transportation System Professional Services are not "projects" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves Contract No. 2020-11 As-Needed Information Technology and Intelligent Transportation Systems Engineering Services with Auriga Corporation, Contract No. 2020-12 As-Needed IT and ITS Engineering Services with Diamond Technology Inc., and Contract No.

2020-13 As-Needed IT and ITS Engineering Services with Parsons Transportation Group Inc. for an amount not-to-exceed \$1,500,000 for each contract and a term of three years with two options to extend two years each up to an additional four years.

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

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

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

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

**Auriga Corporation**

**Contract No. SFMTA-2020-11**

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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  
Auriga Corporation  
Contract No. SFMTA-2020-11**

This Agreement is made as of \_\_\_\_\_, in the City and County of San Francisco (City), State of California, by and between Auriga Corporation, 890 Hillview Court, Suite 130, Milpitas, California 95035, a California corporation (Contractor) and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

**A.** The SFMTA wishes to contract with Contractor for As-Needed Information Technology and Intelligent Transportation Systems engineering services to support on-going SFMTA technology projects.

**B.** This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP), SFMTA-2020-11, issued on March 30, 2020, pursuant to which City selected Contractor as the highest-qualified scorer.

**C.** The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 20%.

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

**E.** The City's Civil Service Commission approved Contract No. 49604-18/19 for this Agreement on April 1, 2019.

Now, THEREFORE, the parties agree as follows:

**Article 1      Definitions**

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

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

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

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

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

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

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

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

**1.8** “**Contractor**” or “**Consultant**” means Auriga Corporation, 890 Hillview Court, Suite 130, Milpitas, California 95035.

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

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

**1.11** “**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.

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

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

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

**1.15** “**On-Site Rate**” means the fully burdened hourly labor rate to be charged to the SFMTA when Contractor’s or Subcontractor(s)’ staff perform work at a SFMTA location.

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

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

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

**1.19** “Remote Rate” means the fully burdened hourly labor rate to be charged to the SFMTA when Contractor’s or Subcontractor(s)’ staff perform work at any locations other than a SFMTA location.

**1.20** “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.

**1.21** “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.

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

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

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

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

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

## **Article 3 Financial Matters**

**3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without

penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

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

**3.3.1 Payment Amount.** Compensation for Services Contractor performs under Task Orders shall be based on either a negotiated lump sum price or a negotiated number of hours per task or subtask using the fixed fully-burdened hourly labor rates in Appendix B. In no event shall the amount of this Agreement exceed One Million, Five Hundred Thousand Dollars (\$1,500,000).

**3.3.2 Method of Computing Hourly Compensation.**

(a) **Fully Burdened Hourly Labor Rates:** The fully burdened hourly labor rates in Appendix B include all direct labor costs, indirect/overhead costs, and services such as reproduction, administrative staff assistance, etc. These hourly labor rates shall be fixed at that level until 12 months after date of effective date of this Agreement. Thereafter, during the term of this Agreement, Contractor may request to escalate these hourly labor rates based on the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U). Contractor must request any escalation of these rates no later than 30 days before the anniversary of the award date of this Agreement, and failure to timely do so may result in a denial of the request. Any requests for escalation of directly hourly labor rates must include evidence of the change in the CPI-U. The SFMTA will review all requests for escalation of fees within 30 days of receipt and notify Contractor of either an approval or denial. If approved, the new rates will become effective on the anniversary of the award date of this Agreement. In no event will the start of the new rates be backdated unless it can be shown that there was a delay on the part of the SFMTA in reviewing the request for

escalation of rates. No hourly rate may be increased without prior written approval of the SFMTA.

**(b) Reimbursable Costs.** The Contractor acknowledges that it is familiar with the provisions Office of Management and Budget (OMB) Circular A-87, Cost Principles For State, Local, and Indian Tribal Governments; that it understands the City does not intend to pay the Contractor for costs under this Agreement that would not be reimbursable to City from its funding agencies in accordance with Circular A-87; and that all payments under this Agreement are subject to audit and adjustment.

**(c) 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. For travel, Contractor must obtain the best air fare available in a timely fashion. Receipts for all expenses must accompany the invoice.

**(d) Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Contractor and subcontractor personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Agreement. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for the services of this Agreement. Vehicle expenses related to commuting, calculated on a cost- per-mile basis for travel within a 100-mile radius of the City, will not be reimbursable; except that travel expenses between SFMTA locations will be reimbursable as an “other direct cost” so long as the expense is approved by the SFMTA in advance and included in the corresponding Task Order.

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

**3.4 Payment.** For Task Orders based on hourly compensation, Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B, “Calculation of Charges.” 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 unit each month, in either case as defined in the Task Order. Payment shall be made for Services identified in the invoice that the Director of Transportation or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the City be liable for interest or late charges for any late payments.

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

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

**3.4.3 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 the Agreement. 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 SFMTA Project Manager's written pre-approval for expenses invoiced but not described in the Task Order scope of work issued as a Purchase Order
- (e) A copy of the receipts for all expenses invoiced
- (f) Description of the work performed, or services rendered
- (g) Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced; except where Contractor invoices for a deliverable that is priced in the Task Order as a lump sum, or as estimated milestone payments described in the Task Order budget

- (h) Subcontractor costs supported by invoice itemization in the same format as described here
- (i) Total costs

**3.4.4 LBE Payment and Compliance Tracking System.** Contractor must submit Form 7: CMD Progress Payment Form with each invoice to enable CCO to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the SFMTA, except as otherwise authorized by the LBE Ordinance. Following the SFMTA's payment of an invoice, Contractor shall submit, electronically, satisfactory evidence that it has promptly paid subcontractors for the work they have performed via the B2GNow System (<https://sfmta.diversitycompliance.com/>). The City's Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required LBE payment information. Failure to submit all required LBE payment information may result in the Controller or the SFMTA withholding 20% of the payment due under that invoice until the required payment information is provided.

**3.4.5 Getting Paid by the City for Goods and/or Services.**

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

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

**3.5 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 fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor

shall include the same audit and inspection rights and record retention requirements in all subcontracts.

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

**4.2 Task Order Requirements.** 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 LBE 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 unless authorized by SFMTA.

**4.2.1 Task Order Request.** The SFMTA will prepare the scope of work and expected time of completion, using the Task Order Request form (Appendix C) and transmit the Task Order Request Form to the Contractor with a request for a proposal for the performance of the task by the established deadline. The SFMTA may, at its sole discretion, choose to exclude

proposals not received by the established deadline. Proposals must include, but not limited to, the following information:

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

**4.2.3 Contractor Proposal.** Contractor shall prepare and submit a proposal for the Task Order showing:

(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 hourly labor rates for each of personnel and Subcontractor (as listed in Appendix B) 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 LBE forms, and labor to manage subcontractors.

(ii) Overhead, including salary burden costs for Contractor's personnel and subcontractors that Contractor proposes to work on the Task Order. Overhead may include costs to prepare monthly invoices, including any required LBE forms, and oversee work performed by subcontractors. Accordingly, labor hours for program or project management performed by subcontractors will not be compensable.

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

**4.2.4 Negotiation of Cost.** The SFMTA Project Manager will review the Task Order proposal and negotiate with Contractor pricing for the Task Order, which shall either be a lump-sum price or fixed fully burdened hourly labor rate to perform the task.

**4.2.5 Subcontracting Goals.** The CCO will review the final negotiated Task Order scope and schedule to determine the LBE goal. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in the Agreement.

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

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

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

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

**4.3 Key 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 shall comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement. Contractor agrees that the following key team members shall be committed and assigned to provide services under this Agreement to the level required by SFMTA for the term of the Agreement and shall also be staffed at the local Contractor's offices within the San Francisco Bay Area for all such time:

- Parkash Daryani, Project Manager
- Laura Uden, Quality Assurance/Quality Control Lead
- Ramesh Daryani, Radio and Data Communication Systems Lead
- David Male, Train Control (CBTC) Lead
- Daniel Lindstrom, Passenger Information System Lead

- Abdul Wahid, IT Network and Infrastructure Support Lead
- Paul Hoekstra, Data and Analytics Infrastructure Lead
- Rob Buchanan, SharePoint Administration and Migration Lead
- Farbod Niroomand, Java/Middleware Engineering Lead
- Paul Colnett, Salesforce Development and Administration Lead

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

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

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

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

If Contractor considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Program Management/Implementation Plan, the Contractor shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified in subsection 4.3.2 above.

**4.7 Subcontracting.**

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

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

- Cornerstone Consulting & Technology, Inc.
- Countervail Engineering
- Gannett Fleming, Inc.
- Hoekstra Consulting
- Lea+Elliott, Inc.
- NSI Engineering, Inc.
- Slalom, LLC
- SYSTRA Consulting, Inc.

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

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

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

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

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

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

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

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

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

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

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

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

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 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 \$1,000,000 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 contract and shall also provide coverage for the following risks:

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

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

**5.1.2** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

**5.1.3** Contractor's Commercial General Liability and Commercial Automobile Liability Insurance policies shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

**5.1.4** All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. 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.

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

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

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

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

**5.1.9** 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.

**5.1.10** 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, unless waived in writing by the SFMTA on a Task Order-by-Task Order basis. Contractor's liability to the City for incidental and consequential damages under this Agreement shall be limited to the Agreement's not-to-exceed amount set forth in Section 3.3.1, as this amount may be amended in accordance with this Agreement.

### **6.4 Force Majeure.**

**6.4.1 Liability.** No Party shall be liable for delay in the performance of its obligations under this Agreement if and to the extent such delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, epidemics, pandemics, or any other cause beyond the reasonable control of such Party (a "Force Majeure Event"). In the case of a Force Majeure Event, Contractor shall immediately commence disaster recovery services as described in Section 6.1.4.

**6.4.2 Duration.** In a Force Majeure Event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by

telephone (to be confirmed in writing within two days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

**6.4.3 Effect.** If a Force Majeure Event substantially prevents, hinders, or delays performance of the Services as critical for more than 15 consecutive Days, then at City's option: (i) City may terminate any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) City may terminate this Agreement without liability to City or Contractor as of a date specified by City in a written notice of termination to Contractor. Contractor shall not have the right to any additional payments from City for costs or expenses incurred by Contractor as a result of any force majeure condition that lasts longer than three days.

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

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

**8.1.1 Exercise of Option.** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor a thirty (30) days written notice of termination. The notice shall specify the date on which termination shall become effective.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

between the invoiced amount and the SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

**8.2 Termination for Default; Remedies.**

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

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

- 3.6 Submitting False Claims
- 4.9 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 ten (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 (5) 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.

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

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

of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 20% of the Services except as otherwise authorized in writing by the CCO. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

**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 Health Care Accountability Ordinance.** If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

**10.9 First Source Hiring Program.** Contractor 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.

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

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

**Article 11 General Provisions**

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

To City: Lisa Walton  
Chief Technology Officer  
San Francisco Municipal Transportation Agency  
1 South Van Ness, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
[Lisa.Walton@sfmta.com](mailto:Lisa.Walton@sfmta.com)

To Contractor: Parkash Daryani  
President  
Auriga Corporation  
890 Hillview Court, Suite 130  
Milpitas, California 95035  
[pdaryani@aurigacorp.com](mailto:pdaryani@aurigacorp.com)

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 May 22, 2020. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, implementing Task Orders shall control over the RFP, and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

## **Article 12 SFMTA Specific Terms**

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

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

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

## **Article 13 Data and Security**

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

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

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

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

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

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

**13.4 Management of City Data and Confidential Information.**

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

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

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

to process the Data or for production of the Data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five business days of the purge.

#### **Article 14 MacBride Principles And Signature**

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



## **Appendix A Scope of Services**

### **1. Description of Services**

Contractor shall provide as-needed Information Technology (IT) and Intelligent Transportation Systems (ITS) engineering services (Services) to support on-going SFMTA technology projects. In each Task Order, the SFMTA will set forth a detailed scope of Services to be performed, basis of compensation (negotiated lump sum or time & materials) and value of the Services under the Task Order.

Subsections A through F, below, provide examples of the types of tasks (listed by “Service Category”) the SFMTA may require under a Task Order.

#### **A. ITS Project Support**

The SFMTA plans to deliver a number of major ITS projects as part of its five-year Capital Improvement Program. These ITS projects include replacement of the agency’s outdated radio communications systems with a modern radio and data communications system; replacement of the agency’s existing ATCS with a state-of-the-art CBTC system; and replacement of the existing real-time passenger information system with a new real-time vehicle arrival and service update system. Specific tasks to support these or other ITS projects may include:

1. Providing project management services focused on technical aspects of ITS projects (i.e., no budgetary oversight).
2. Developing and maintaining project management plans, including system-engineering management plans (SEMPs), that provide details for technical implementation, system integration, and quality controls.
3. Reviewing the SFMTA’s existing ITS service architecture to ensure compliance with the project’s technical requirements, and compliance with applicable system-engineering standards and best practices.
4. Conducting detailed reviews of existing or proposed ITS designs, including reviews of hardware and software functionality, performance, data, and design-limitation requirements. Developing and presenting to the SFMTA written recommendations for proposed design approaches, including descriptions of any technical and cost efficiencies related to those approaches. Incorporating SFMTA-approved recommendations into the system design documents.
5. Developing system integration and interface control documents for new ITS projects.
6. Developing system-integration acceptance test plans and procedures.
7. Participating in system verification and validation activities, including supporting field testing and system acceptance tests, troubleshooting issues, and analyzing and documenting the results.

8. Integrating existing ITS interfaces with new systems.
9. Providing engineering and testing support for implementation of new ITS projects, including reviewing and responding to submittals and requests for information, preparing and reviewing change orders, and providing technical support.
10. Overseeing, tracking, and documenting changes in SFMTA-approved designs and requirements of the field environments.
11. Verifying and documenting that SFMTA contractors perform operations, measurements, and inspections in accordance with applicable contract requirements. For example, review operational manuals and as-built drawing submittals.
12. Overseeing the installation of new software and hardware updates.
13. Working with project team to define and update the requirements verification traceability matrix (RVTM).
14. Designing, developing, and implementing data integration opportunities.
15. Participating in comprehensive system and performance testing and safety certifications.
16. Overseeing the installation of systems to ensure compliance with specifications, standards, codes, regulations, and documentation requirements.
17. Working with project team to review and prepare cutover plan and implement cutover procedures for transitions to new systems.
18. Reviewing and assist SFMTA contractors to develop technical training material.
19. Participating in system performance evaluation and auditing.
20. Writing ETL (extract, transform, and load) logic to automate data collection and reporting processes/pipelines including data quality and monitoring.
21. Providing system engineering support including communications systems analysis, special engineering of GPS driven systems, strategic analysis of Muni's human and automated systems, systems integration, safety processes, configuration management, and related work as requested by the SFMTA.
22. Providing as-needed specialized technical support of the Radio and CAD/AVL Communications while a vehicle is in service.

## **B. IT Network Infrastructure Support**

The SFMTA's IT network infrastructure connects all technology systems in the agency. This infrastructure must provide security, access, and resiliency. The SFMTA maintains a multi-vendor network based on industry best practices. In addition to traditional wired networking, the SFMTA uses various wireless technologies that require monitoring and management of competing radio frequencies. Specific tasks to support the SFMTA's IT network infrastructure may include:

1. Conducting analysis of existing IT network architecture and recommending solutions to optimize performance, and assisting with the implementation of recommendations.
2. Working with SFMTA staff to establish a networking environment. For example, installing, configuring, testing, and documenting the equipment/network systems according to the design and specifications.
3. Working collaboratively with SFMTA staff to assist with day-to-day networking tasks to ensure network reliability, availability, and serviceability within minimal interruption.
4. Providing technical support, analysis, and solutions to reported IT network problems.
5. Working with SFMTA staff to configure firewall security settings to access-permissions groups for individuals, and setting up provisions for incoming data.
6. Supporting IT network upgrade or expansion projects. For example, installing hardware or software, and performing integration testing.
7. Producing documentation for installation, network topology, and troubleshooting of communications hardware or software.
8. Testing and designing solutions to ensure the IT network is secure with vulnerability management built in.
9. Supporting existing configuration of the IT network, and developing new solutions that leverage networking protocols, including OSPF, BGP, HSRP, multicast, SIP, QoS, VLANs, and MPLS.
10. Analyzing, identifying, and troubleshooting radio frequency issues and working with SFMTA staff to manage the spectrum.
11. Installing and configuring wireless backhaul radios (e.g., Proxim, Siklu, Radwin) when needed.

### **C. Data and Analytics Infrastructure Support**

The SFMTA's data and analytics infrastructure includes physical infrastructure (e.g., servers and storage devices) and software, including Oracle and Microsoft databases, a Hadoop-on-Azure ecosystem, a Talend data integration platform, messaging services, and multiple monitoring services. The SFMTA is responsible for data processing and orchestration/choreography of services into applications and business processes. The SFMTA also structures and models data to support analysis and back-end analytics, and is in the process of implementing data governance measures. Specific tasks to support the SFMTA's data and analytic infrastructure may include:

1. Working with SFMTA staff to understand, define, and, if necessary, refine business objectives.
2. Defining, refining, and documenting metrics to support key business objectives.
3. Identifying measures used to create metrics.

4. Creating and refining data and analytic models or schemas to support SFMTA's general analytics including analysis and reporting.
5. Drafting specifications for APIs and other interfaces to support business objectives, metrics, and reporting and analysis needs.
6. Making recommendations for data transformations including quality control and validation requirements.
7. Documenting business workflows.
8. Creating reports and dashboards.
9. Building pipelines to extract, ingest, process, and load data as batch and real-time operations.
10. Implementing data and analytic models or schemas.
11. Ensuring ingested and processed data are associated with quality codes.
12. Implementing monitoring and alerting processes.
13. Creating pipelines utilizing distributed technologies for storage and processing (especially Kudu, HDFS, Spark, and Azure technologies)
14. Implementing processes for replication and high availability.
15. Implementing processes for managing sensitive datasets.

#### **D. SharePoint Administration and Migration Support**

SharePoint is the SFMTA's document management solution. It serves as a platform that houses the agency's various custom applications, and is home to all its intranet sites. As the SFMTA expands its use of SharePoint, the agency will migrate from the current on-premise version of SharePoint 2013, and the environment hosted in SFMTA data centers, to SharePoint 2019, and plans to host the new environment in the Microsoft Azure cloud. Additional SharePoint resources may be needed to facilitate the migration of content and applications. Specific tasks to support this migration may include:

1. Providing backend administration and support for the SFMTA's SharePoint applications.
2. Maintaining SharePoint firewalls and security.
3. Managing SharePoint migration from initial installation to maintenance, and customizing design as necessary.
4. Working with SFMTA staff and consultants to customize SharePoint applications.
5. Troubleshooting and solving operational problems for assigned software or hardware technologies.

#### **E. Java / Middleware Engineer Support**

The SFMTA's middleware function supports the movement of data between internal, cloud-based, and third-party IT systems, which include the systems used by or for commuter shuttles, bike and scooter shares, taxis, payments, Salesforce, scheduling, and vehicle tracking, among others. The SFMTA currently uses Talend enterprise service bus (ESB) and Kafka to

build application programming interfaces (APIs) that receive, queue, and transfer data to our partners and throughout SFMTA internal systems. The SFMTA is also exploring serverless architecture in the cloud for building and maintaining data pipelines. Specific tasks to support this middleware functional development may include:

1. Developing data integrations and APIs to ingest and share data to external business partners and the public.
2. Performing data validation, API development, and creating methods to receive and post data.
3. Managing and assisting to deploy ESB infrastructure, including writing and editing ansible deployment scripts.
4. Developing standard operating procedures to secure web services based on industry best practices.
5. Turning on API logging and creating reports to measure the availability of the web services.

#### **F. Salesforce Development and Administration Support**

Salesforce is the SFMTA's platform for public transactions and outreach. The agency builds and maintains over 15 different applications within Salesforce to support color curbs, temporary signs, street closures, bike parking, and various business operations. In Salesforce, the SFMTA build solutions using a declarative first approach to minimize APEX development, but in exceptional cases will use APEX triggers and classes. Specific tasks to support these Salesforce operations may include:

1. Serving as the Salesforce application developer or administrator for SFMTA projects.
2. Developing solutions that focus on the permitting and licensing process for street operations, regulated mobility, and transportation operations.
3. Creating page layouts, custom objects, custom fields, and email notifications per business requirements.
4. Creating and updating visual flows and process builder automations based on business requirements by taking a declarative first approach, minimizing APEX code development where possible.

## **2. Services Provided by Attorneys**

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

## **3. Reports**

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

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

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

**Appendix B  
Calculation of Charges**

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

	Name, Labor Classification & Direct Hourly Rate				Fully Burdened Rate with Fee (On-Site)	Fully Burdened Rate with Fee (Remote)
Firm	Name	Position/Classification (Work to be Performed)	Education/ Experience	Direct Hourly Rate		
Auriga Corporation	Parkash Daryani	Project Manager	MS/BS	\$115.38	\$296.29	\$308.64
			35 Years' Experience			
Auriga Corporation	Thomas Gibson	Project Controller	BS	\$100.00	\$256.80	\$267.50
			40 Years' Experience			
Auriga Corporation	Ramesh Daryani	Radio and Communications Systems Manager	MBA/BS/BS Tech	\$90.00	\$231.12	\$240.75
			30 Years' Experience			
Auriga Corporation	Willy Dommen	Systems Integration Manager	BS/MBA	\$96.15	\$246.91	\$257.21
			25 Years' Experience			
Auriga Corporation	Sheldon Leader	Radio and Communications Systems Engineer	BS	\$75.00	\$192.60	\$200.63
			45 Years' Experience			
Auriga Corporation	Yunbae Kim	Train Control -CBTC Engineer	MS/BS	\$96.15	\$246.91	\$257.20
			35 Years' Experience			
Auriga Corporation	Yongseon Lee	Electrical Engineer	BS	\$101.00	\$259.37	\$270.18
			12 Years' Experience			
Auriga Corporation	Hamid Farhoosh, Ph.D	Solution Architect	PhD	\$125.00	\$321.00	\$334.38
			37 Years' Experience			
Auriga Corporation	John Chen	Senior IT Analyst	MS/BS	\$55.00	\$141.24	\$147.13

	<b>Name, Labor Classification &amp; Direct Hourly Rate</b>				<b>Fully Burdened Rate with Fee (On-Site)</b>	<b>Fully Burdened Rate with Fee (Remote)</b>
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Education/ Experience</b>	<b>Direct Hourly Rate</b>		
			15 Years' Experience			
Auriga Corporation	Jorje Licea	Senior IT Analyst	BS	\$40.00	\$102.72	\$107.00
			15 Years' Experience			
Auriga Corporation	Kapeel Daryani	Systems Analyst	MS/BS	\$50.00	\$128.40	\$133.75
			7 Years' Experience			
Auriga Corporation	Soham Mookerjea	Senior Systems Engineer	MS/BS	\$52.88	\$135.79	\$141.45
			12 Years' Experience			
Auriga Corporation	Shyam Nathan	SharePoint Admin/ Developer	BS	\$38.54	\$98.98	\$103.09
			18 Years' Experience			
Auriga Corporation	Ralph Harnden	Lead Systems Engineer	BS	\$100.00	\$256.80	\$267.50
			35 Years' Experience			
Auriga Corporation	Keith Hyman	Lead Systems Engineer	BA	\$100.00	\$256.80	\$267.50
			39 Years' Experience			
Auriga Corporation	Suresh Gottipati	Senior Software Engineer	BA	\$75.00	\$192.60	\$200.63
			14 Years' Experience			
Auriga Corporation	Niteesha Kasthala	Senior Software Engineer	MS/BS Electrical Engineering	\$65.00	\$166.92	\$173.88
			14 Years' Experience			
Auriga Corporation	Edward Ritchie	Senior Cost Estimator	40+ Years' Experience	\$115.00	\$295.32	\$307.63
Auriga Corporation	Divakar Somanchi	Senior Scheduler	MS. PE	\$105.00	\$269.64	\$280.87
			25 Years' Experience			
SYSTRA Consulting, Inc.	John Haley	O&M Specialist	MPA	\$125.00	\$272.85	\$310.30
			40 Years' Experience			

	<b>Name, Labor Classification &amp; Direct Hourly Rate</b>				<b>Fully Burdened Rate with Fee (On-Site)</b>	<b>Fully Burdened Rate with Fee (Remote)</b>
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Education/ Experience</b>	<b>Direct Hourly Rate</b>		
SYSTRA Consulting, Inc.	Frederic Bana	Senior Systems Engineer	MS Civil Engineering	\$104.00	\$227.01	\$258.17
			19 Years' Experience			
SYSTRA Consulting, Inc.	David Male	CBTC Lead / Senior Project Manager	BS, Applied Science & Technology / 40 years	\$125.00	\$272.85	\$310.30
SYSTRA Consulting, Inc.	Jean-Michel Fromont	Senior CBTC System Engineer	MS, Engineering / 25 years	\$125.00	\$272.85	\$310.30
SYSTRA Consulting, Inc.	Marino Iaconelli	CBTC System Engineer	BS, Electrical Engineering / 40 years	\$92.60	\$202.12	\$229.87
SYSTRA Consulting, Inc.	Ilham Askarn	CBTC System Engineer	MS, Electrical Engineering / 14 years	\$87.00	\$189.90	\$215.97
SYSTRA Consulting, Inc.	Jean-Philippe Ferron	CBTC System Engineer	Master's Degree, Radio Communications / 19 years	\$73.84	\$161.17	\$183.30
SYSTRA Consulting, Inc.	Isabelle Christophe	Software System Engineer	ME, Computer Science / 20 years	\$71.64	\$156.38	\$177.83
SYSTRA Consulting, Inc.	Doug Ailey	System Safety Engineer	BS, Mechanical Engineering / 23 years	\$125.00	\$272.85	\$310.30
SYSTRA Consulting, Inc.	Yonel Constant	System Safety Engineer	BS, Engineering / 13 years	\$80.82	\$176.41	\$200.63
SYSTRA Consulting, Inc.	Helmut Schweitzer	Senior Train Control Engineer	BS, Electrical Engineering / 47 years	\$122.40	\$267.18	\$303.85
SYSTRA Consulting, Inc.	Chuck Fox	Senior Train Control Engineer	BS, Electrical Engineering / 41 years	\$101.75	\$222.10	\$252.58
SYSTRA Consulting, Inc.	Michael Meyer	Train Control Engineer	MS, Engineering / 20 years	\$85.00	\$185.54	\$211.00
SYSTRA Consulting, Inc.	Aurelie Lecreff	Senior Communications Engineer	MS, Engineering / 19 years	\$99.08	\$216.27	\$245.95

	<b>Name, Labor Classification &amp; Direct Hourly Rate</b>				<b>Fully Burdened Rate with Fee (On-Site)</b>	<b>Fully Burdened Rate with Fee (Remote)</b>
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Education/ Experience</b>	<b>Direct Hourly Rate</b>		
SYSTRA Consulting, Inc.	Jerome Saubie	Senior Systems Integrator	BS, Radio Communications / 21 years	\$101.00	\$220.46	\$250.72
SYSTRA Consulting, Inc.	Dennis Wong	Communications Engineer	BS, Electrical Engineering / 13 years	\$73.95	\$161.42	\$183.57
SYSTRA Consulting, Inc.	Joseph Sanfilippo	Communications Engineer	MS, Electrical and Computer Engineering / 15 years	\$74.54	\$162.70	\$185.04
SYSTRA Consulting, Inc.	Dino Paran	Communications Engineer	B.S. Mechanical Engineering/ 13 years	\$67.31	\$146.92	\$167.09
SYSTRA Consulting, Inc.	Kenneth Boyd	Senior Systems Vehicles Engineer	BS, Electrical Engineering Technology / 28 years	\$108.17	\$236.12	\$268.52
Gannett Fleming, Inc.	Daniel Lindstrom	Passenger Information System	AS	\$96.80	\$243.40	\$266.19
			36 Years of Experience			
Gannett Fleming, Inc.	Andrew Paski	Passenger Information System	BS	\$38.30	\$96.31	\$105.32
			4 Years of Experience			
Gannett Fleming, Inc.	Christopher Krehmeyer	Passenger Information System	MBA/BS/B Tech Mech	\$83.20	\$209.21	\$228.79
			25 years of Experience			
Lea+Elliot, Inc	Andrew Fredrick	Systems Engineer - ATCS Design	BS	\$47.48	\$129.04	\$140.22
			7 Years' Experience			
Lea+Elliot, Inc	Woranon Leelaswatanakij	Systems Engineer - Radio Communication	MS/BA	\$66.53	\$180.82	\$196.48
			10 Years' Experience			
Lea+Elliot, Inc	Sean Williams	Systems Engineer -	MBA	\$54.08	\$146.98	\$159.71

	<b>Name, Labor Classification &amp; Direct Hourly Rate</b>				<b>Fully Burdened Rate with Fee (On-Site)</b>	<b>Fully Burdened Rate with Fee (Remote)</b>
<b>Firm</b>	<b>Name</b>	<b>Position/Classification (Work to be Performed)</b>	<b>Education/ Experience</b>	<b>Direct Hourly Rate</b>		
		CBTC	11 Years' Experience			
Cornerstone Consulting & Technology, Inc	Farbod Niroomand	Java/Middleware Engineer Support	BS Computer Science	\$95.00	\$238.88	\$261.24
			12 Years' Experience			
Cornerstone Consulting & Technology, Inc	Paul Colnett	Salesforce Developer	BS Business Information Systems	\$98.00	\$246.42	\$269.49
			20 Years' Experience			
Cornerstone Consulting & Technology, Inc	Abdul Wahid	Senior Network Engineer	BS Business Administration	\$96.00	\$241.39	\$263.99
			22 Years of Experience			
Slalom, LLC	Rob Buchanan	SharePoint Lead	BS	\$131.00	\$294.36	\$294.36
			21 Years' Experience			
Slalom, LLC	Erik Wendland	SharePoint Engineer	BA	\$107.15	\$240.77	\$240.77
			15 Years' Experience			
Countervail Engineering	Bradley Banks	Systems Integrator & Lead Comm Designer	MS/BS	\$92.00	\$206.72	\$206.72
			19 Years' Experience			
Countervail Engineering	Harrell Thomas	Systems Engineer & Integration Manager	BS	\$125.00	\$280.88	\$280.88
			25 Years' Experience			
Countervail Engineering	Edwin Mortlock	Train Control/CBTC Expert Advisor	BS	\$165.00	\$370.76	\$370.76
			40 Years' Experience			
Countervail Engineering	Carmine Daloia	Sr. Communications Designer	MS/BS	\$118.00	\$265.15	\$265.15

	Name, Labor Classification & Direct Hourly Rate				Fully Burdened Rate with Fee (On-Site)	Fully Burdened Rate with Fee (Remote)
Firm	Name	Position/Classification (Work to be Performed)	Education/ Experience	Direct Hourly Rate		
			24 Years' Experience			
Countervail Engineering	Brian Clark	Train Control Lead Designer	BS	\$114.30	\$256.83	\$256.83
			31 Years' Experience			
Countervail Engineering	Darold Davis	RF Spectrum Expert Advisor	BS	\$58.00	\$130.33	\$130.33
			47 Years' Experience			
Hoekstra Consulting	Paul Hoekstra	Data Analytics	MS	\$119.00	\$267.39	\$267.39
			25 Years' Experience			
NSI Engineering, Inc.	Laura Uden	QA/QC Manager	PhD	\$99.33	\$254.02	\$254.02
			30 Years' Experience			
NSI Engineering, Inc.	Carrie Cabak	QA/QC Manager	MBA/ MS	\$99.33	\$254.02	\$254.02
			30 Years' Experience			
NSI Engineering, Inc.	Eric Satrum	QA/QC Manager	MBA/BS	\$88.22	\$225.61	\$225.61

\*Fully Burdened On-Site Hourly Labor Rate = Direct Hourly Rate x Multiplier listed in Table 2

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

On-Site Rates to be used for work assignments of a duration of at least 90 days and when consultant works over 50% of the time at SFMTA site

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

Company	On-Site Overhead (%)	Remote Overhead (%)	MULTIPLIERS	
			On-Site	Remote

Auriga Corporation	140.00%	150.00%	2.40	2.50
SYSTRA Consulting, Inc	103.70%	131.48%	2.04	2.32
Gannet Fleming, Inc	135.06%	157.45%	2.35	2.57
Lea+Elliot, Inc	201.98%	201.98%	3.02	3.02
Cornerstone Consulting & Technology, Inc	135.06%	157.45%	2.35	2.57
Slalom, LLC	110.00%	110.00%	2.10	2.10
Countervail Engineering	110.00%	110.00%	2.10	2.10
Hoekstra Consulting	110.00%	110.00%	2.10	2.10
NSI Engineering Inc.	139.41%	139.41%	2.39	2.39





**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**

**Diamond Technology, Inc.**

**Contract No. SFMTA-2020-12**

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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  
Diamond Technology, Inc.  
Contract No. SFMTA-2020-12**

This Agreement is made as of \_\_\_\_\_, in the City and County of San Francisco (City), State of California, by and between Diamond Technology, Inc., 100 Pine Street, Suite 1250, San Francisco, CA 94111, a California corporation (Contractor) and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

**F.** The SFMTA wishes to contract with Contractor for as-needed information technology and Intelligent Transportation Systems engineering services to support on-going SFMTA technology projects.

**G.** This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP), SFMTA-2020-11, issued on March 30, 2020, pursuant to which City selected Contractor as the highest-qualified scorer.

**H.** The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 20%.

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

**J.** The City's Civil Service Commission approved Contract No. 49604-18/19 for this Agreement on April 1, 2019.

Now, THEREFORE, the parties agree as follows:

**Article 15 Definitions**

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

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

**15.2** "CCO" means the SFMTA Contract Compliance Office.

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

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

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

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

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

**15.8** “**Contractor**” or “**Consultant**” means Diamond Technology, Inc., 100 Pine Street, Suite 1250, San Francisco, CA 94111.

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

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

**15.11** “**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.

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

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

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

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

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

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

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

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

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

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

## **Article 16 Term of the Agreement**

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

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

## **Article 17 Financial Matters**

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

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

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

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

**17.3.1 Payment Amount.** Compensation for Services Contractor performs under Task Orders shall be based on either a negotiated lump sum price or a negotiated number of hours per task or subtask using the fixed fully-burdened hourly labor rates in Appendix B. In no event shall the amount of this Agreement exceed One Million, Five Hundred Thousand Dollars (\$1,500,000).

**17.3.2 Method of Computing Hourly Compensation.**

(a) **Fully Burdened Hourly Labor Rates:** The fully burdened hourly labor rates in Appendix C include all direct labor costs, indirect/overhead costs, and services such as reproduction, administrative staff assistance, etc. These hourly labor rates shall be fixed at that level until 12 months after date of effective date of this Agreement. Thereafter, during the term of this Agreement, Contractor may request to escalate these hourly labor rates based on the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U). Contractor must request any escalation of these rates no later than 30 days before the anniversary of the award date of this Agreement, and failure to timely do so may result in a denial of the request. Any requests for escalation of directly hourly labor rates must include evidence of the change in the CPI-U. The SFMTA will review all requests for escalation of fees within 30 days of receipt and notify Contractor of either an approval or denial. If approved, the new rates will become effective on the anniversary of the award date of this Agreement. In no event will the start of the new rates be backdated unless it can be shown that there was a delay on the part of the SFMTA in reviewing the request for escalation of rates. No hourly rate may be increased without prior written approval of the SFMTA.

(b) **Reimbursable Costs.** The Contractor acknowledges that it is familiar with the provisions Office of Management and Budget (OMB) Circular A-87, Cost Principles For State, Local, and Indian Tribal Governments; that it understands the City does not intend to pay the Contractor for costs under this Agreement that would not be reimbursable to

City from its funding agencies in accordance with Circular A-87; and that all payments under this Agreement are subject to audit and adjustment.

(c) **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. For travel, Contractor must obtain the best air fare available in a timely fashion. Receipts for all expenses must accompany the invoice.

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

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

**17.4 Payment.** For Task Orders based on hourly compensation, Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix C, "Calculation of Charges." For Task Orders based on a lump-sum price, Contractor shall provide invoices to the SFMTA based on completion of Task Order milestones as identified in Contractor's accepted Task Order proposal, or a percentage or dollar amount per unit each month, in either case as defined in the Task Order. Payment shall be made for Services identified in the invoice that the Director of Transportation or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the City be liable for interest or late charges for any late payments.

**17.4.1 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished

Deliverables, as satisfying all of the requirements of this Agreement. SFMTA agrees to provide Contractor with notification of unacceptable Deliverables within two weeks of being invoiced for the Deliverables in question. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

**17.4.3 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 the Agreement. Each Contractor invoice shall contain the following information:

- (j) Contract Number
- (k) Task Order Number
- (l) Purchase Order Number for the Task Order
- (m) A copy of the SFMTA Project Manager's written pre-approval for expenses invoiced but not described in the Task Order scope of work issued as a Purchase Order
- (n) A copy of the receipts for all expenses invoiced
- (o) Description of the work performed, or services rendered
- (p) Name, position, 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
- (q) Subcontractor costs supported by invoice itemization in the same format as described here
- (r) Total costs

**17.4.4 LBE Payment and Compliance Tracking System.** Contractor must submit Form 7: CMD Progress Payment Form with each invoice to enable CCO to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the SFMTA, except as otherwise authorized by the LBE Ordinance. Following the

SFMTA's payment of an invoice, Contractor shall submit, electronically, satisfactory evidence that it has promptly paid subcontractors for the work they have performed via the B2GNow System (<https://sfmta.diversitycompliance.com/>). The City's Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required LBE payment information. Failure to submit all required LBE payment information may result in the Controller or the SFMTA withholding 20% of the payment due under that invoice until the required payment information is provided.

#### **17.4.5 Getting Paid by the City for Goods and/or Services.**

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

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

**17.5 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 fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**17.6 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.

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

**Article 18 Services and Resources**

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

**18.2 Task Order Requirements.** 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 LBE 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.

**18.2.1 Task Order Request.** The SFMTA will prepare the scope of work and expected time of completion, using the Task Order Request form (Appendix C) and transmit the Task Order Request Form to the Contractor with a request for a proposal for the performance of the task by the established deadline. The SFMTA may, at its sole discretion, choose to exclude proposals not received by the established deadline. Proposals must include, but not limited to, the following information:

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

**18.2.3 Contractor Proposal.** Contractor shall prepare and submit a proposal for the Task Order showing:

(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 hourly labor rates for each of personnel and Subcontractor (as listed in Appendix B) 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 LBE forms, and labor to manage subcontractors.

(ii) Overhead, including salary burden costs for Contractor's personnel and subcontractors that Contractor proposes to work on the Task Order. Overhead may include costs to prepare monthly invoices, including any required LBE forms, and oversee work performed by subcontractors. Accordingly, labor hours for program or project management performed by subcontractors will not be compensable.

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

**18.2.4 Negotiation of Cost.** The SFMTA Project Manager will review the Task Order proposal and negotiate with Contractor pricing for the Task Order, which shall either be a lump-sum price or fixed fully burdened hourly labor rate to perform the task.

**18.2.5 Subcontracting Goals.** The CCO will review the final negotiated Task Order scope and schedule to determine the LBE goal. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in the Agreement.

**18.2.6 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.

**18.2.7 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.

**18.2.8 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.

**18.2.9 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.

**18.3 Key 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 shall comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement. Contractor agrees that the following key team members shall be committed and assigned to provide services under this Agreement to the level required by SFMTA for the term of the Agreement and shall also be staffed at the local Contractor's offices within the San Francisco Bay Area for all such time:

- James Diamond, Program Manager
- Vineet Agrawal, PE, ITS Technical Lead
- Paul Antony, Technical Lead/PM, Data Systems Architect

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

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

**18.5 Transmittal of Work Product.** When requested by Agency's Project Manager, and after completion of each task and subtask, the Contractor shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its

Subcontractors' work on this Agreement. The Contractor's Project Manager and Key Personnel shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to Agency.

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

If Contractor considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Program Management/Implementation Plan, the Contractor shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified in subsection 4.3.2 above.

### **18.7 Subcontracting.**

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

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

- Tarjuna Systems
- Essention Group, Inc.
- Accend Networks
- Flex Analytics , Inc.
- Quality Engineering, Inc.
- Soteria Company, LLC

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

**18.8.1 Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor.

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

**18.8.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section

4.8 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

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

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

## **Article 19 Insurance and Indemnity**

### **19.1 Insurance.**

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

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

(d) Professional Liability Insurance, applicable to Contractor’s profession, with limits not less than \$1,000,000 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 \$1,000,000 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 contract and shall also provide coverage for the following risks:

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

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

**19.1.2** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

**19.1.3** Contractor’s Commercial General Liability and Commercial Automobile Liability Insurance policies 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.

**19.1.4** All policies shall be endorsed to provide 30 days’ advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. 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.

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

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

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

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

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

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

**19.2 Indemnification.** 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.

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

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

## **Article 20 Liability of the Parties**

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

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

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

## **Article 21 Payment of Taxes**

**21.1 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.

**21.2 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:

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

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

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

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

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

Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. The City will pay Contractor any monies withheld under this paragraph, without interest, when Contractor comes into compliance with its obligations.

## Article 22 Termination and Default

### 22.1 Termination for Convenience

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

**22.1.2 Contractor Actions.** Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions may include any 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.

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

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

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

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

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

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

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

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

## **22.2 Termination for Default; Remedies.**

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

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

3.6 Submitting False Claims

4.9	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.

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

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

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

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

**22.4 Rights and Duties upon Termination or Expiration.**

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

3.4.1	Payment Limited to Satisfactory Services
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

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

## **Article 23     Rights In Deliverables**

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

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

## **Article 24     Additional Requirements Incorporated by Reference**

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

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

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

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

#### **24.5 Nondiscrimination Requirements**

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

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

**24.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 20% of the Services except as otherwise authorized in writing by the CCO. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

**24.7 Minimum Compensation Ordinance.** If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a

minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor 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.

**24.8 Health Care Accountability Ordinance.** If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

**24.9 First Source Hiring Program.** Contractor 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.

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

**24.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (a) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (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.

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

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

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

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

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

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

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

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

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

**24.19 Reserved. (Preservative Treated Wood Products).**

**Article 25 General Provisions**

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

To City: Lisa Walton  
Chief Technology Officer  
San Francisco Municipal Transportation Agency  
1 South Van Ness, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
[Lisa.Walton@sfmta.com](mailto:Lisa.Walton@sfmta.com)

To Contractor: James Diamond  
Managing Director  
Diamond Technology, Inc.  
100 Pine Street, Suite 1250  
San Francisco, CA 94111  
[james@diamondti.net](mailto:james@diamondti.net)

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.

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

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

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

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

**25.6 Dispute Resolution Procedure.**

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

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

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

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

**25.9 Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. All appendices to this Agreement are

incorporated by reference as though fully set forth. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

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

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

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

**25.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing Task Orders, the RFP, and Contractor's proposal received May 22, 2020. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, implementing Task Orders shall control over the RFP, and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

## **Article 26 SFMTA Specific Terms**

## **26.1 Large Vehicle Driver Safety Training Requirements.**

**26.1.1** Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/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.

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

## **Article 27 Data and Security**

### **27.1 Nondisclosure of Private, Proprietary or Confidential Information.**

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

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

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

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

**27.4 Management of City Data and Confidential Information.**

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

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

**27.4.3 Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information, including all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall, within 10 business days, purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the Data or for production of the Data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five business days of the purge.

**Article 28 MacBride Principles And Signature**

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



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

<p><b>CITY</b></p> <p><b>San Francisco Municipal Transportation Agency</b></p> <hr/> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary, MTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Isidro A. Jiménez Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p><b>Diamond Technology, Inc.</b></p> <hr/> <p>James Diamond Managing Director</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: 0000021431</p>
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**Appendices:**

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form

## **Appendix A Scope of Services**

### **1. Description of Services**

Contractor shall provide as-needed information technology (IT) and Intelligent Transportation Systems (ITS) engineering services (Services) to support on-going SFMTA technology projects. In each Task Order, the SFMTA will set forth a detailed scope of Services to be performed, basis of compensation (negotiated lump sum or time & materials) and value of the Services under the Task Order.

Subsections A through F, below, provide examples of the types of tasks (listed by “Service Category”) the SFMTA may require under a Task Order.

#### **G. ITS Project Support**

The SFMTA plans to deliver a number of major ITS projects as part of its five-year Capital Improvement Program. These ITS projects include replacement of the agency’s outdated radio communications systems with a modern radio and data communications system; replacement of the agency’s existing ATCS with a state-of-the-art CBTC system; and replacement of the existing real-time passenger information system with a new real-time vehicle arrival and service update system. Specific tasks to support these or other ITS projects may include:

23. Providing project management services focused on technical aspects of ITS projects (i.e., no budgetary oversight).
24. Developing and maintaining project management plans, including system-engineering management plans (SEMPs), that provide details for technical implementation, system integration, and quality controls.
25. Reviewing the SFMTA’s existing ITS service architecture to ensure compliance with the project’s technical requirements, and compliance with applicable system-engineering standards and best practices.
26. Conducting detailed reviews of existing or proposed ITS designs, including reviews of hardware and software functionality, performance, data, and design-limitation requirements. Developing and presenting to the SFMTA written recommendations for proposed design approaches, including descriptions of any technical and cost efficiencies related to those approaches. Incorporating SFMTA-approved recommendations into the system design documents.
27. Developing system integration and interface control documents for new ITS projects.
28. Developing system-integration acceptance test plans and procedures.
29. Participating in system verification and validation activities, including supporting field testing and system acceptance tests, troubleshooting issues, and analyzing and documenting the results.

30. Integrating existing ITS interfaces with new systems.
31. Providing engineering and testing support for implementation of new ITS projects, including reviewing and responding to submittals and requests for information, preparing and reviewing change orders, and providing technical support.
32. Overseeing, tracking, and documenting changes in SFMTA-approved designs and requirements of the field environments.
33. Verifying and documenting that SFMTA contractors perform operations, measurements, and inspections in accordance with applicable contract requirements. For example, review operational manuals and as-built drawing submittals.
34. Overseeing the installation of new software and hardware updates.
35. Working with project team to define and update the requirements verification traceability matrix (RVTM).
36. Designing, developing, and implementing data integration opportunities.
37. Participating in comprehensive system and performance testing and safety certifications.
38. Overseeing the installation of systems to ensure compliance with specifications, standards, codes, regulations, and documentation requirements.
39. Working with project team to review and prepare cutover plan and implement cutover procedures for transitions to new systems.
40. Reviewing and assist SFMTA contractors to develop technical training material.
41. Participating in system performance evaluation and auditing.
42. Writing ETL (extract, transform, and load) logic to automate data collection and reporting processes/pipelines including data quality and monitoring.
43. Providing system engineering support including communications systems analysis, special engineering of GPS driven systems, strategic analysis of Muni's human and automated systems, systems integration, safety processes, configuration management, and related work as requested by the SFMTA.
44. Providing as-needed specialized technical support of the Radio and CAD/AVL Communications while a vehicle is in service.

## **H. IT Network Infrastructure Support**

The SFMTA's IT network infrastructure connects all technology systems in the agency. This infrastructure must provide security, access, and resiliency. The SFMTA maintains a multi-vendor network based on industry best practices. In addition to traditional wired networking, the SFMTA uses various wireless technologies that require monitoring and management of competing radio frequencies. Specific tasks to support the SFMTA's IT network infrastructure may include:

12. Conducting analysis of existing IT network architecture and recommending solutions to optimize performance, and assisting with the implementation of recommendations.
13. Working with SFMTA staff to establish a networking environment. For example, installing, configuring, testing, and documenting the equipment/network systems according to the design and specifications.
14. Working collaboratively with SFMTA staff to assist with day-to-day networking tasks to ensure network reliability, availability, and serviceability within minimal interruption.
15. Providing technical support, analysis, and solutions to reported IT network problems.
16. Working with SFMTA staff to configure firewall security settings to access-permissions groups for individuals, and setting up provisions for incoming data.
17. Supporting IT network upgrade or expansion projects. For example, installing hardware or software, and performing integration testing.
18. Producing documentation for installation, network topology, and troubleshooting of communications hardware or software.
19. Testing and designing solutions to ensure the IT network is secure with vulnerability management built in.
20. Supporting existing configuration of the IT network, and developing new solutions that leverage networking protocols, including OSPF, BGP, HSRP, multicast, SIP, QoS, VLANs, and MPLS.
21. Analyzing, identifying, and troubleshooting radio frequency issues and working with SFMTA staff to manage the spectrum.
22. Installing and configuring wireless backhaul radios (e.g., Proxim, Siklu, Radwin) when needed.

## **I. Data and Analytics Infrastructure Support**

The SFMTA's data and analytics infrastructure includes physical infrastructure (e.g., servers and storage devices) and software, including Oracle and Microsoft databases, a Hadoop-on-Azure ecosystem, a Talend data integration platform, messaging services, and multiple monitoring services. The SFMTA is responsible for data processing and orchestration/choreography of services into applications and business processes. The SFMTA also structures and models data to support analysis and back-end analytics, and is in the process of implementing data governance measures. Specific tasks to support the SFMTA's data and analytic infrastructure may include:

16. Working with SFMTA staff to understand, define, and, if necessary, refine business objectives.
17. Defining, refining, and documenting metrics to support key business objectives.
18. Identifying measures used to create metrics.

19. Creating and refining data and analytic models or schemas to support SFMTA's general analytics including analysis and reporting.
20. Drafting specifications for APIs and other interfaces to support business objectives, metrics, and reporting and analysis needs.
21. Making recommendations for data transformations including quality control and validation requirements.
22. Documenting business workflows.
23. Creating reports and dashboards.
24. Building pipelines to extract, ingest, process, and load data as batch and real-time operations.
25. Implementing data and analytic models or schemas.
26. Ensuring ingested and processed data are associated with quality codes.
27. Implementing monitoring and alerting processes.
28. Creating pipelines utilizing distributed technologies for storage and processing (especially Kudu, HDFS, Spark, and Azure technologies)
29. Implementing processes for replication and high availability.
30. Implementing processes for managing sensitive datasets.

#### **J. SharePoint Administration and Migration Support**

SharePoint is the SFMTA's document management solution. It serves as a platform that houses the agency's various custom applications, and is home to all its intranet sites. As the SFMTA expands its use of SharePoint, the agency will migrate from the current on-premise version of SharePoint 2013, and the environment hosted in SFMTA data centers, to SharePoint 2019, and plans to host the new environment in the Microsoft Azure cloud. Additional SharePoint resources may be needed to facilitate the migration of content and applications. Specific tasks to support this migration may include:

6. Providing backend administration and support for the SFMTA's SharePoint applications.
7. Maintaining SharePoint firewalls and security.
8. Managing SharePoint migration from initial installation to maintenance, and customizing design as necessary.
9. Working with SFMTA staff and consultants to customize SharePoint applications.
10. Troubleshooting and solving operational problems for assigned software or hardware technologies.

#### **K. Java / Middleware Engineer Support**

The SFMTA's middleware function supports the movement of data between internal, cloud-based, and third-party IT systems, which include the systems used by or for commuter shuttles, bike and scooter shares, taxis, payments, Salesforce, scheduling, and vehicle tracking, among others. The SFMTA currently uses Talend enterprise service bus (ESB) and Kafka to

build application programming interfaces (APIs) that receive, queue, and transfer data to our partners and throughout SFMTA internal systems. The SFMTA is also exploring serverless architecture in the cloud for building and maintaining data pipelines. Specific tasks to support this middleware functional development may include:

6. Developing data integrations and APIs to ingest and share data to external business partners and the public.
7. Performing data validation, API development, and creating methods to receive and post data.
8. Managing and assisting to deploy ESB infrastructure, including writing and editing ansible deployment scripts.
9. Developing standard operating procedures to secure web services based on industry best practices.
10. Turning on API logging and creating reports to measure the availability of the web services.

#### **L. Salesforce Development and Administration Support**

Salesforce is the SFMTA's platform for public transactions and outreach. The agency builds and maintains over 15 different applications within Salesforce to support color curbs, temporary signs, street closures, bike parking, and various business operations. In Salesforce, the SFMTA build solutions using a declarative first approach to minimize APEX development, but in exceptional cases will use APEX triggers and classes. Specific tasks to support these Salesforce operations may include:

5. Serving as the Salesforce application developer or administrator for SFMTA projects.
6. Developing solutions that focus on the permitting and licensing process for street operations, regulated mobility, and transportation operations.
7. Creating page layouts, custom objects, custom fields, and email notifications per business requirements.
8. Creating and updating visual flows and process builder automations based on business requirements by taking a declarative first approach, minimizing APEX code development where possible.

## **2. Services Provided by Attorneys**

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

## **3. Reports**

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

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

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

**Appendix B  
Calculation of Charges**

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

Firm	Direct Salary Rates				Fully Burdened On-Site Hourly Labor Rate	Fully Burdened Remote Hourly Labor Rate
	Name	Position/Classification (Work to be Performed)	Education / Experience	Direct Hourly Labor Rate		
Diamond Technology	James Diamond	Program/Project Management	BS (Int'l Bus. Finance)/ 20 years	\$100	\$210	\$210
Diamond Technology	Paul Antony	IT Lead & Data Engineer	M.S (Computer Science)/20 years	\$100	\$210	\$210
Diamond Technology	Dilip Gunawardena	Sr. SW Developer	M.S (Computer Science)/20 years	\$100/\$80	\$210	\$168
Diamond Technology	Mark Sprague	Sr. Networking Engineer	BS (Computer Science)/20 years	\$100	\$210	\$210
Diamond Technology	Gerald Spica	Salesforce Consultant	BA (Lit.)/20 years	\$125	\$262.50	\$262.50
Diamond Technology	Randy Cheng	Network Engineer	AA (BM)/23 years	\$60	\$126	\$126
Essention	Chris Chung	Sharepoint	MS(Computer Science)/17	\$106.00	\$235.32	\$235.32
Essention	Mark Krywaruczenko	Sharepoint	BS (Computer Science) 15	\$82.50	\$183.15	\$183.15
Essention	Thomas Kirkman	Java / Middleware	BA/6 years	\$63.75	\$141.53	\$141.53
Essention	Chad Hammond	Salesforce	BS, Applied Computer Science/	\$82.50	\$183.15	\$183.15

Firm	Direct Salary Rates			Fully Burdened On-Site Hourly Labor Rate	Fully Burdened Remote Hourly Labor Rate	
	Name	Position/Classification (Work to be Performed)	Education / Experience			Direct Hourly Labor Rate
Tarjuna	Vineet Agrawal	ITS Lead	MS, Electrical Engineering, Clemson University, 2002 / 21 years of experience	\$115.00	\$253.00	\$253.00
Tarjuna	James Cox	ITS Support	M.S., Engineering Science, University of California, Berkeley, Berkeley, California, 1975 / 30 years of experience	\$80.00	\$176.00	\$176.00
Tarjuna	Abbas Sizar	ITS Support	MS, Electrical Engineering, Drexel University / 30+ years of experience	\$125.00	\$275.00	\$275.00
Tarjuna	Ali Matin	IT/ITS interface support	30 years of experience	\$100.00	\$220.00	\$220.00
Soteria	Thomas C Griego	Security and Safety certification	M.S. in Industrial Psychology, California State University, 1987 / 30 years of experience	\$115.00	\$205.21	\$205.21

Firm	Direct Salary Rates			Fully Burdened On-Site Hourly Labor Rate	Fully Burdened Remote Hourly Labor Rate	
	Name	Position/Classification (Work to be Performed)	Education / Experience			Direct Hourly Labor Rate
QE Corp	Fred Zerebinski	QA/QC	B. S. Architectural Engineering, California State Polytechnic University, SLO, 1970 / 40 years of experience	\$90.00	\$192.60	\$210.60
Accend Networks	Paula Wong	Sr. Networking Engineer	BS Information Systems and Accounting/ 20 years	\$100	\$208	\$208
Accend Networks	Abdul Khokhar	Networking Engineer	BS Computer Information System from California State University	\$80.00	\$166.00	\$166.00
Flex Analytics	Andrew Taft	Data Engineer	BS CIS, MS Accounting/15 years	\$99.00	\$216.81	\$216.81
Flex Analytics	AJ Nixon	Data Engineer	BS MIS, MS MIS/20 years	\$83.75	\$183.41	\$183.41

*\*Fully Burdened On-Site Hourly Labor Rate = Direct Hourly Rate x Multiplier listed in Table 2*

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

*On-Site Rates to be used for work assignments of a duration of at least 90 days and when consultant works over 50% of the time at SFMTA site*

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

Company	On-Site Overhead (%)	Remote Overhead (%)	MULTIPLIERS	
			On-Site	Remote
Diamond Technology, Inc.	110.00%	110.00%	2.1	2.1
Essention Group, Inc.	122.00%	122.00%	2.22	2.22
Flex Analytics	119.00%	119.00%	2.19	2.19
Accend Networks	108.00%	108.00%	2.08	2..08
Tarjuna Systems, Inc.	120.00%	120.00%	2.2	2.2
QE Corp	134.00%	114.00%	2.14	2.34
Soteria	78.44%	78.44%	1.7844	1.7844





**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**

**Parsons Transportation Group Inc.**

**Contract No. SFMTA-2020-13**

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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  
Parsons Transportation Group, Inc.  
Contract No. SFMTA-2020-13**

This Agreement is made as of \_\_\_\_\_, in the City and County of San Francisco (City), State of California, by and between Parsons Transportation Group Inc., 44 Montgomery Street, Suite 880, San Francisco, CA 94104, a California corporation (Contractor) and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

**K.** The SFMTA wishes to contract with Contractor for as-needed information technology and Intelligent Transportation Systems engineering services to support on-going SFMTA technology projects.

**L.** This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP), SFMTA-2020-11, issued on March 30, 2020, pursuant to which City selected Contractor as the highest-qualified scorer.

**M.** The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 20%.

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

**O.** The City's Civil Service Commission approved Contract No. 49604-18/19 for this Agreement on April 1, 2019.

Now, THEREFORE, the parties agree as follows:

**Article 29 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:

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

**29.2** "CCO" means the SFMTA Contract Compliance Office.

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

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

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

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

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

**29.8** “**Contractor**” or “**Consultant**” means Parsons Transportation Group, Inc., 44 Montgomery Street, Suite 880, San Francisco, CA 94104.

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

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

**29.11** “**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.

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

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

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

**29.15** “**On-Site Rate**” means the fully burdened hourly labor rate to be charged to the SFMTA when Contractor’s or Subcontractor(s)’ staff perform work at a SFMTA location.

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

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

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

**29.19** “**Remote Rate**” means the fully burdened hourly labor rate to be charged to the SFMTA when Contractor’s or Subcontractor(s)’ staff perform work at any locations other than an SFMTA location.

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

**29.21** “**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.

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

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

### **Article 30 Term of the Agreement**

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

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

### **Article 31 Financial Matters**

**31.1 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.

**31.2 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).

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

**31.3.1 Payment Amount.** Compensation for Services Contractor performs under Task Orders shall be based on either a negotiated lump sum price or a negotiated number of hours per task or subtask using the fixed fully-burdened hourly labor rates in Appendix B. In no event shall the amount of this Agreement exceed One Million, Five Hundred Thousand Dollars (\$1,500,000).

**31.3.2 Method of Computing Hourly Compensation.**

(a) **Fully Burdened Hourly Labor Rates:** The fully burdened hourly labor rates in Appendix C include all direct labor costs, indirect/overhead costs, and services such as reproduction, administrative staff assistance, etc. These hourly labor rates shall be fixed at that level until 12 months after date of Effective Date of this Agreement. Thereafter, during the term of this Agreement, Contractor may request to escalate these hourly labor rates based on the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U). Contractor must request any escalation of these rates no later than 30 days before the anniversary of the award date of this Agreement, and failure to timely do so may result in a denial of the request. Any requests for escalation of directly hourly labor rates must include evidence of the change in the CPI-U. The SFMTA will review all requests for escalation of fees within 30 days of receipt and notify Contractor of either an approval or denial. If approved, the new rates will become effective on the anniversary of the award date of this Agreement. In no event will the start of the new rates be backdated unless it can be shown that there was a delay on the part of the SFMTA in reviewing the request for

escalation of rates. No hourly rate may be increased without prior written approval of the SFMTA.

(b) **Reimbursable Costs.** The Contractor acknowledges that it is familiar with the provisions Office of Management and Budget (OMB) Circular A-87, Cost Principles For State, Local, and Indian Tribal Governments; that it understands the City does not intend to pay the Contractor for costs under this Agreement that would not be reimbursable to City from its funding agencies in accordance with Circular A-87; and that all payments under this Agreement are subject to audit and adjustment.

(c) **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. For travel, Contractor must obtain the best air fare available in a timely fashion. Receipts for all expenses must accompany the invoice.

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

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

**31.4 Payment.** For Task Orders based on hourly compensation, Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix C, "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 unit each month, in either case as defined in the Task Order. Payment shall be made for Services identified in the invoice that the Director of Transportation or his or her designee, in

his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the City be liable for interest or late charges for any late payments.

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

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

**31.4.3 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 the Agreement. Each Contractor invoice shall contain the following information:

- (s) Contract Number
- (t) Task Order Number
- (u) Purchase Order Number for the Task Order
- (v) A copy of the SFMTA Project Manager's written pre-approval for expenses invoiced but not described in the Task Order scope of work issued as a Purchase Order
- (w) A copy of the receipts for all expenses invoiced
- (x) Description of the work performed, or services rendered
- (y) Name, position, 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
- (z) Subcontractor costs supported by invoice itemization in the same format as described here
- (aa) Total costs

**31.4.4 LBE Payment and Compliance Tracking System.** Contractor must submit Form 7: CMD Progress Payment Form with each invoice to enable CCO to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the SFMTA, except as otherwise authorized by the LBE Ordinance. Following the SFMTA's payment of an invoice, Contractor shall submit, electronically, satisfactory evidence that it has promptly paid subcontractors for the work they have performed via the B2GNow System (<https://sfmta.diversitycompliance.com/>). The City's Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required LBE payment information. Failure to submit all required LBE payment information may result in the Controller or the SFMTA withholding 20% of the payment due under that invoice until the required payment information is provided.

**31.4.5 Getting Paid by the City for Goods and/or Services.**

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

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

**31.5 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 fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**31.6 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.

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

**Article 32 Services and Resources**

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

**32.2 Task Order Requirements.** 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 LBE 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.

**32.2.1 Task Order Request.** The SFMTA will prepare the scope of work and expected time of completion, using the Task Order Request form (Appendix C) and transmit the Task Order Request Form to the Contractor with a request for a proposal for the performance of the task by the established deadline. The SFMTA may, at its sole discretion, choose to exclude proposals not received by the established deadline. Proposals must include, but not limited to, the following information:

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

**32.2.3 Contractor Proposal.** Contractor shall prepare and submit a proposal for the Task Order showing:

(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 hourly labor rates for each of personnel and Subcontractor (as listed in Appendix B) 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 LBE forms, and labor to manage subcontractors.

(ii) Overhead, including salary burden costs for Contractor's personnel and subcontractors that Contractor proposes to work on the Task Order. Overhead may include costs to prepare monthly invoices, including any required LBE forms, and oversee work performed by subcontractors. Accordingly, labor hours for program or project management performed by subcontractors will not be compensable.

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

**32.2.4 Negotiation of Cost.** The SFMTA Project Manager will review the Task Order proposal and negotiate with Contractor pricing for the Task Order, which shall either be a lump-sum price or fixed fully burdened hourly labor rate to perform the task.

**32.2.5 Subcontracting Goals.** The CCO will review the final negotiated Task Order scope and schedule to determine the LBE goal. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in the Agreement.

**32.2.6 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.

**32.2.7 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.

**32.2.8 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.

**32.2.9 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.

**32.3 Key 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 shall comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement. Contractor agrees that the following key team members shall be committed and assigned to provide services under this Agreement to the level required by SFMTA for the term of the Agreement and shall also be staffed at the local Contractor's offices within the San Francisco Bay Area for all such time:

- Ted Woods, Project Manager
- Betty Chang, Deputy Project Manager

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

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

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

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

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

If Contractor considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Program Management/Implementation Plan, the Contractor shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified in subsection 4.3.2 above.

### **32.7 Subcontracting.**

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

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

- Charistech Engineers & Consultants, LLC
- Countervail Engineering
- Delta Computer Solutions, Inc.
- Iteris, Inc.
- Lea & Elliott, Inc.

- Systems Integration Resources, Inc.
- TransSIGHT LLC
- Transit Systems Engineering, Inc.
- West Coast Consulting Group

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

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

**32.8.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for

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

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

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

## **Article 33 Insurance and Indemnity**

### **33.1 Insurance.**

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

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

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

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

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 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 \$1,000,000 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 contract and shall also provide coverage for the following risks:

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

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

**33.1.2** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

**33.1.3** Contractor's Commercial General Liability and Commercial Automobile Liability Insurance policies 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.

**33.1.4** All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. 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.

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

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

**33.1.6** 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.

**33.1.7** 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.

**33.1.8** 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.

**33.1.9** 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.

**33.1.10** 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.

**33.2 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 third-party claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from: (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.

**33.2.1 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.

**33.2.2 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 34 Liability of the Parties**

**34.1 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.

**34.2 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.

**34.3 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, unless waived in writing by the SFMTA on a Task Order-by-Task Order basis.

**34.4 Force Majeure.**

**34.4.1 Liability.** No Party shall be liable for delay in the performance of its obligations under this Agreement if and to the extent such delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, epidemics, pandemics, or any other cause beyond the reasonable control of such Party (a "Force Majeure Event"). In the case of a Force Majeure Event, Contractor shall immediately commence disaster recovery services in accordance with Contractor's SFMTA-approved disaster recovery and business continuity policy; except that, if Contractor has no such policy, then Contractor shall commence disaster recovery services immediately upon receipt of, and in accordance with, a corresponding Task Order which the SFMTA will issue as promptly as practicable after the Force Majeure Event.

**34.4.2 Duration.** In a Force Majeure Event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

**34.4.3 Effect.** If a Force Majeure Event substantially prevents, hinders, or delays performance of the Services as critical for more than 15 consecutive Days, then at City's option: (i) City may terminate any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) City may terminate this Agreement without liability to City or Contractor as of a date specified by City in a written notice of termination to Contractor. Contractor shall not have the right to any additional payments from City for costs or expenses incurred by Contractor as a result of any force majeure condition that lasts longer than three days.

**Article 35 Payment of Taxes**

**35.1 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.

**35.2 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:

**35.2.1** 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.

**35.2.2** 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.

**35.2.3** 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.

**35.2.4** 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.

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

## **Article 36 Termination and Default**

### **36.1 Termination for Convenience**

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

**36.1.2 Contractor Actions.** Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions may include any 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.

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

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

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

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

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

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

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

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

## **36.2 Termination for Default; Remedies.**

**36.2.1** 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

4.9	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.

**36.2.2** 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 such event, Contractor shall invoice the City according to the conditions set forth in Section 8.1.3(a), (c) and (d) herein, for all work satisfactorily completed up to the specified termination date, but should the City opt 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.

**36.2.3** 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.

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

**36.3 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.

**36.4 Rights and Duties upon Termination or Expiration.**

**36.4.1** 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
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

**36.4.2** 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 37     Rights In Deliverables**

**37.1     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.

### **37.2     Works for Hire; Pre-Existing Works.**

**37.2.1** 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.

**37.2.2** Notwithstanding the above, Contractor and its subcontractor(s) shall maintain sole right, title, interest and ownership of all of their works, materials, processes, software, etc. which pre-date the Effective Date of this Agreement ("Pre-Existing Works"). Upon payment for a Deliverable containing such Pre-Existing Works, Contractor shall grant to the City a perpetual, royalty free, irrevocable, non-exclusive, fully paid-up license to use Pre-Existing Works for City purposes.

**37.2.3** Contractor does not guarantee or warrant works for hire or Pre-Existing Works for uses beyond those specified in corresponding Task Order(s) the SFMTA issues under this Agreement. The SFMTA will be solely liable for using such works for hire or Pre-Existing Works for any use not described in the corresponding Task Order(s), unless the SFMTA obtains Contractor's prior written authorization.

## **Article 38 Additional Requirements Incorporated by Reference**

**38.1 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).

**38.2 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.

**38.3 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.

**38.4 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.

### **38.5 Nondiscrimination Requirements**

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

**38.5.2 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.

**38.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 20% of the Services except as otherwise authorized in writing by the CCO. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

**38.7 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.

**38.8 Health Care Accountability Ordinance.** If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

**38.9 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.

**38.10 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.

**38.11 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.

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

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

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

**38.14.1** 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.

**38.14.2** 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.

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

**38.16 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.

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

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

**38.19 Reserved. (Preservative Treated Wood Products).**

## **Article 39 General Provisions**

**39.1 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: Lisa Walton  
Chief Technology Officer  
San Francisco Municipal Transportation Agency  
1 South Van Ness, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
[Lisa.Walton@sfmta.com](mailto:Lisa.Walton@sfmta.com)

To Contractor: Ibrahim Muftic, PE, VP  
RTIS West Region Manager  
Parsons Transportation Group, Inc.  
44 Montgomery Street, Suite 880  
San Francisco, CA 94104

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.

**39.2 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.

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

**39.4 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.

**39.5 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).

**39.6 Dispute Resolution Procedure.**

**39.6.1 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.

**39.6.2 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.

**39.7 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.

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

**39.9 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).

**39.10 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.

**39.11 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.

**39.12 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.

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

RFP, and Contractor's proposal dated May 22, 2020. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, implementing Task Orders shall control over the RFP, and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

## **Article 40 SFMTA Specific Terms**

### **40.1 Large Vehicle Driver Safety Training Requirements.**

**40.1.1** 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.

**40.1.2** 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 41 Data and Security**

### **41.1 Nondisclosure of Private, Proprietary or Confidential Information.**

**41.1.1 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.

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

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

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

### **41.4 Management of City Data and Confidential Information.**

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

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

advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

**41.4.3 Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information, including all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall, within 10 business days, purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the Data or for production of the Data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five business days of the purge.

## **Article 42 MacBride Principles And Signature**

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

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

<p><b>CITY</b></p> <p><b>San Francisco Municipal Transportation Agency</b></p> <hr/> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary, MTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Isidro A. Jiménez Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p><b>Parsons Transportation Group Inc.</b></p> <hr/> <p>Ibrahim Muftic, PE, VP RTIS West Region Manager</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000013494</p>
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**Appendices:**

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form

## **Appendix A Scope of Services**

### **1. Description of Services**

Contractor shall provide as-needed information technology (IT) and Intelligent Transportation Systems (ITS) engineering services (Services) to support on-going SFMTA technology projects. In each Task Order, the SFMTA will set forth a detailed scope of Services to be performed, basis of compensation (negotiated lump sum or time & materials) and value of the Services under the Task Order.

Subsections A through F, below, provide examples of the types of tasks (listed by “Service Category”) the SFMTA may require under a Task Order.

#### **M. ITS Project Support**

The SFMTA plans to deliver a number of major ITS projects as part of its five-year Capital Improvement Program. These ITS projects include replacement of the agency’s outdated radio communications systems with a modern radio and data communications system; replacement of the agency’s existing ATCS with a state-of-the-art CBTC system; and replacement of the existing real-time passenger information system with a new real-time vehicle arrival and service update system. Specific tasks to support these or other ITS projects may include:

45. Providing project management services focused on technical aspects of ITS projects (i.e., no budgetary oversight).
46. Developing and maintaining project management plans, including system-engineering management plans (SEMPs), that provide details for technical implementation, system integration, and quality controls.
47. Reviewing the SFMTA’s existing ITS service architecture to ensure compliance with the project’s technical requirements, and compliance with applicable system-engineering standards and best practices.
48. Conducting detailed reviews of existing or proposed ITS designs, including reviews of hardware and software functionality, performance, data, and design-limitation requirements. Developing and presenting to the SFMTA written recommendations for proposed design approaches, including descriptions of any technical and cost efficiencies related to those approaches. Incorporating SFMTA-approved recommendations into the system design documents.
49. Developing system integration and interface control documents for new ITS projects.
50. Developing system-integration acceptance test plans and procedures.
51. Participating in system verification and validation activities, including supporting field testing and system acceptance tests, troubleshooting issues, and analyzing and documenting the results.

52. Integrating existing ITS interfaces with new systems.
53. Providing engineering and testing support for implementation of new ITS projects, including reviewing and responding to submittals and requests for information, preparing and reviewing change orders, and providing technical support.
54. Overseeing, tracking, and documenting changes in SFMTA-approved designs and requirements of the field environments.
55. Verifying and documenting that SFMTA contractors perform operations, measurements, and inspections in accordance with applicable contract requirements. For example, review operational manuals and as-built drawing submittals.
56. Overseeing the installation of new software and hardware updates.
57. Working with project team to define and update the requirements verification traceability matrix (RVTM).
58. Designing, developing, and implementing data integration opportunities.
59. Participating in comprehensive system and performance testing and safety certifications.
60. Overseeing the installation of systems to ensure compliance with specifications, standards, codes, regulations, and documentation requirements.
61. Working with project team to review and prepare cutover plan and implement cutover procedures for transitions to new systems.
62. Reviewing and assist SFMTA contractors to develop technical training material.
63. Participating in system performance evaluation and auditing.
64. Writing ETL (extract, transform, and load) logic to automate data collection and reporting processes/pipelines including data quality and monitoring.
65. Providing system engineering support including communications systems analysis, special engineering of GPS driven systems, strategic analysis of Muni's human and automated systems, systems integration, safety processes, configuration management, and related work as requested by the SFMTA.
66. Providing as-needed specialized technical support of the Radio and CAD/AVL Communications while a vehicle is in service.

## **N. IT Network Infrastructure Support**

The SFMTA's IT network infrastructure connects all technology systems in the agency. This infrastructure must provide security, access, and resiliency. The SFMTA maintains a multi-vendor network based on industry best practices. In addition to traditional wired networking, the SFMTA uses various wireless technologies that require monitoring and management of competing radio frequencies. Specific tasks to support the SFMTA's IT network infrastructure may include:

23. Conducting analysis of existing IT network architecture and recommending solutions to optimize performance, and assisting with the implementation of recommendations.
24. Working with SFMTA staff to establish a networking environment. For example, installing, configuring, testing, and documenting the equipment/network systems according to the design and specifications.
25. Working collaboratively with SFMTA staff to assist with day-to-day networking tasks to ensure network reliability, availability, and serviceability within minimal interruption.
26. Providing technical support, analysis, and solutions to reported IT network problems.
27. Working with SFMTA staff to configure firewall security settings to access-permissions groups for individuals, and setting up provisions for incoming data.
28. Supporting IT network upgrade or expansion projects. For example, installing hardware or software, and performing integration testing.
29. Producing documentation for installation, network topology, and troubleshooting of communications hardware or software.
30. Testing and designing solutions to ensure the IT network is secure with vulnerability management built in.
31. Supporting existing configuration of the IT network, and developing new solutions that leverage networking protocols, including OSPF, BGP, HSRP, multicast, SIP, QoS, VLANs, and MPLS.
32. Analyzing, identifying, and troubleshooting radio frequency issues and working with SFMTA staff to manage the spectrum.
33. Installing and configuring wireless backhaul radios (e.g., Proxim, Siklu, Radwin) when needed.

## **O. Data and Analytics Infrastructure Support**

The SFMTA's data and analytics infrastructure includes physical infrastructure (e.g., servers and storage devices) and software, including Oracle and Microsoft databases, a Hadoop-on-Azure ecosystem, a Talend data integration platform, messaging services, and multiple monitoring services. The SFMTA is responsible for data processing and orchestration/choreography of services into applications and business processes. The SFMTA also structures and models data to support analysis and back-end analytics, and is in the process of implementing data governance measures. Specific tasks to support the SFMTA's data and analytic infrastructure may include:

31. Working with SFMTA staff to understand, define, and, if necessary, refine business objectives.
32. Defining, refining, and documenting metrics to support key business objectives.
33. Identifying measures used to create metrics.

34. Creating and refining data and analytic models or schemas to support SFMTA's general analytics including analysis and reporting.
35. Drafting specifications for APIs and other interfaces to support business objectives, metrics, and reporting and analysis needs.
36. Making recommendations for data transformations including quality control and validation requirements.
37. Documenting business workflows.
38. Creating reports and dashboards.
39. Building pipelines to extract, ingest, process, and load data as batch and real-time operations.
40. Implementing data and analytic models or schemas.
41. Ensuring ingested and processed data are associated with quality codes.
42. Implementing monitoring and alerting processes.
43. Creating pipelines utilizing distributed technologies for storage and processing (especially Kudu, HDFS, Spark, and Azure technologies)
44. Implementing processes for replication and high availability.
45. Implementing processes for managing sensitive datasets.

#### **P. SharePoint Administration and Migration Support**

SharePoint is the SFMTA's document management solution. It serves as a platform that houses the agency's various custom applications, and is home to all its intranet sites. As the SFMTA expands its use of SharePoint, the agency will migrate from the current on-premise version of SharePoint 2013, and the environment hosted in SFMTA data centers, to SharePoint 2019, and plans to host the new environment in the Microsoft Azure cloud. Additional SharePoint resources may be needed to facilitate the migration of content and applications. Specific tasks to support this migration may include:

11. Providing backend administration and support for the SFMTA's SharePoint applications.
12. Maintaining SharePoint firewalls and security.
13. Managing SharePoint migration from initial installation to maintenance, and customizing design as necessary.
14. Working with SFMTA staff and consultants to customize SharePoint applications.
15. Troubleshooting and solving operational problems for assigned software or hardware technologies.

#### **Q. Java / Middleware Engineer Support**

The SFMTA's middleware function supports the movement of data between internal, cloud-based, and third-party IT systems, which include the systems used by or for commuter shuttles, bike and scooter shares, taxis, payments, Salesforce, scheduling, and vehicle tracking, among others. The SFMTA currently uses Talend enterprise service bus (ESB) and Kafka to

build application programming interfaces (APIs) that receive, queue, and transfer data to our partners and throughout SFMTA internal systems. The SFMTA is also exploring serverless architecture in the cloud for building and maintaining data pipelines. Specific tasks to support this middleware functional development may include:

11. Developing data integrations and APIs to ingest and share data to external business partners and the public.
12. Performing data validation, API development, and creating methods to receive and post data.
13. Managing and assisting to deploy ESB infrastructure, including writing and editing ansible deployment scripts.
14. Developing standard operating procedures to secure web services based on industry best practices.
15. Turning on API logging and creating reports to measure the availability of the web services.

## **R. Salesforce Development and Administration Support**

Salesforce is the SFMTA's platform for public transactions and outreach. The agency builds and maintains over 15 different applications within Salesforce to support color curbs, temporary signs, street closures, bike parking, and various business operations. In Salesforce, the SFMTA build solutions using a declarative first approach to minimize APEX development, but in exceptional cases will use APEX triggers and classes. Specific tasks to support these Salesforce operations may include:

9. Serving as the Salesforce application developer or administrator for SFMTA projects.
10. Developing solutions that focus on the permitting and licensing process for street operations, regulated mobility, and transportation operations.
11. Creating page layouts, custom objects, custom fields, and email notifications per business requirements.
12. Creating and updating visual flows and process builder automations based on business requirements by taking a declarative first approach, minimizing APEX code development where possible.

## **2. Services Provided by Attorneys**

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

## **3. Reports**

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

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

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

**Appendix B  
Calculation of Charges**

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

Firm	Direct Salary Rates			Fully Burdened On-site Hourly Labor Rate	Fully Burdened Remote Hourly Labor Rate	
	Name	Position/Classification (Work to be Performed)	Education/ Experience			
Parsons Transportation Group Inc.	Ted Woods	Project Manager/Senior Engineering Manager	•Master of Business Administration; •BS in Mechanical Engineering; •32 years experience	\$ 109.88	\$ 223.95	\$ 259.17
Parsons Transportation Group Inc.	Lori Colangelo	Technical Director/Program Director	•BS in Computer Science; •35 years experience	\$ 136.15	\$ 277.49	\$ 321.13
Parsons Transportation Group Inc.	Betty Chang	Deputy Project Manager/Senior Engineering Manager	•BS in Electrical Engineering; •27.5 years experience	\$ 103.54	\$ 211.02	\$ 244.22
Parsons Transportation Group Inc.	David Irish	QA/QC Lead/Senior Quality Manager	•Master of Business Administration; •MS in Civil Engineering; •30 years experience	\$ 79.41	\$ 161.85	\$ 187.30
Parsons Transportation Group Inc.	David Norman	QA/QC/Senior Project Manager	•24 years experience	\$ 89.83	\$ 183.09	\$ 211.88
Parsons Transportation Group Inc.	Ram Parthasarathy	ITS Engineer/Systems Engineer II	•MS in Telecommunications Engineering; •BS in electronics and Communication Engineering;	\$ 63.45	\$ 129.31	\$ 149.65

Firm	Direct Salary Rates				Fully Burdened On-site Hourly Labor Rate	Fully Burdened Remote Hourly Labor Rate
	Name	Position/Classification (Work to be Performed)	Education/ Experience	Direct Hourly Labor Rate		
			8 years experience			
Parsons Transportation Group Inc.	Leo Falkenstein	Network Infrastructure Lead/Senior Network Engineer	•21 years experience	\$ 62.23	\$ 126.83	\$ 146.77
Parsons Transportation Group Inc.	Chris Liu	Network Infrastructure Engineer/IT Specialist	•22 years experience	\$ 47.54	\$ 96.89	\$ 112.13
Parsons Transportation Group Inc.	Kevin Finley	Network Infrastructure Engineer/Senior Network Engineer	•Bachelor General Studies; •Electronic Technology Certificate; •28 years experience	\$ 63.76	\$ 129.94	\$ 150.38
Parsons Transportation Group Inc.	Jerome O'Neil	Data and Analytics Lead/Principal Systems Engineer	•31 years experience	\$ 72.12	\$ 146.98	\$ 170.10
Parsons Transportation Group Inc.	Lynn Arthur Pettis	Data Analyst/IT Database Manager	•MS in Computer Resources and Information Management; •BS in Computer Science; •25 years experience	\$ 59.19	\$ 120.64	\$ 139.61
Parsons Transportation Group Inc.	Jeremy Allen	Data Analyst/Senior Data Analyst	•17 years experience	\$ 47.98	\$ 97.80	\$ 113.18

Firm	Direct Salary Rates				Fully Burdened On-site Hourly Labor Rate	Fully Burdened Remote Hourly Labor Rate
	Name	Position/Classification (Work to be Performed)	Education/ Experience	Direct Hourly Labor Rate		
Parsons Transportation Group Inc.	Marcus Monka	Data Analyst/Senior IT Specialist	<ul style="list-style-type: none"> <li>•MS in Modeling and Simulation;</li> <li>•MS in Management Information Systems;</li> <li>•Master of Business Administration;</li> <li>•10 years experience</li> </ul>	\$ 66.31	\$ 135.14	\$ 156.39
Parsons Transportation Group Inc.	Renee Faulkner	Document control/SP Lead	<ul style="list-style-type: none"> <li>•13 years experience</li> </ul>	\$ 34.76	\$ 70.83	\$ 81.98
Parsons Transportation Group Inc.	David Gaarsoe	JAVA/Middleware Engineer/Lead Software Developer	<ul style="list-style-type: none"> <li>•BS in Computer Science;</li> <li>•31 years experience</li> </ul>	\$ 77.81	\$ 158.59	\$ 183.53
Parsons Transportation Group Inc.	Harsha Yellamelli	JAVA/Middleware Engineer/Associate Engineer	<ul style="list-style-type: none"> <li>•MS in Computer Science;</li> <li>•Bachelor of Technology, Electronics and Telecommunications;</li> <li>•2 years experience</li> </ul>	\$ 40.65	\$ 82.84	\$ 95.87
Parsons Transportation Group Inc.	Rafael Montes	JAVA/Middleware Engineer/Senior Engineer	<ul style="list-style-type: none"> <li>•BS in Systems Engineering;</li> <li>•10 years experience</li> </ul>	\$ 48.17	\$ 98.18	\$ 113.63
Countervail Engineering	Brad Banks	ITS Project Support/Systems Integrator and Lead Communications Designer	<ul style="list-style-type: none"> <li>•MS in Electrical Engineering</li> <li>•19 years experience</li> </ul>	\$ 92.00	\$ 202.86	\$ 202.86
Lea+Elliott, Inc.	Sean Williams	ITS Project Support/System Engineer	<ul style="list-style-type: none"> <li>•Master of Business Administration;</li> <li>•BS Engineering;</li> <li>•11 years experience</li> </ul>	\$ 54.08	\$ 144.43	\$ 156.68
Systems Integration Resources	Steven Hans	Architect/SharePoint Lead	<ul style="list-style-type: none"> <li>•Bachelor of Arts;</li> <li>•16 years experience</li> </ul>	\$ 154.75	\$ 216.11	\$ 224.23

Firm	Direct Salary Rates				Fully Burdened On-site Hourly Labor Rate	Fully Burdened Remote Hourly Labor Rate
	Name	Position/Classification (Work to be Performed)	Education/ Experience	Direct Hourly Labor Rate		
Systems Integration Resources	Oscar Medina	Azure Architect/Sr. Dev	•Master of Fine Arts; •17 years experience	\$ 159.75	\$ 223.09	\$ 231.48
Systems Integration Resources	John Berrocal	Sr. Apps. Engineer/Admin	•Bachelor of Science; •9+ years experience	\$ 120.00	\$ 167.58	\$ 173.88
Systems Integration Resources	Patrick Stuart	Tech Lead/Infra. Engineer	•Bachelor of Science; •12+ years experience	\$ 120.00	\$ 167.58	\$ 173.88
TransSIGHT	Bimesh Giri	JAVA/Middleware Engineer/System Architect	•Master of Science; •16+ years experience	\$ 79.80	\$ 148.14	\$ 160.71
TransSIGHT	Deepa Mani	JAVA/Middleware Engineer/Data Architect/Engineer	•Bachelor of Science; •16+ years experience	\$ 78.00	\$ 144.80	\$ 157.08
TransSIGHT	Prerna Saxena	Data and Analytics Infrastructure/Data Scientist	•Master of Science; •12+ years experience	\$ 57.70	\$ 107.11	\$ 116.20
West Coast Consulting	Benafsha Irani	Salesforce Administrator	•Master of Science; 15 years experience	\$ 75.00	\$ 165.38	\$ 165.38
West Coast Consulting	Jeh Russo	Salesforce Administrator	•Master of Science; •12 years experience	\$ 65.00	\$ 143.33	\$ 143.33
West Coast Consulting	Zach Vira	Salesforce Administrator	•Bachelor of Science; •15 years experience	\$ 65.00	\$ 143.33	\$ 143.33
West Coast Consulting	Tom Brigham	Salesforce Administrator	•Master of Science; •10 years experience	\$ 55.00	\$ 121.28	\$ 121.28
West Coast Consulting	Nosh Peston	Salesforce Administrator	•Bachelor of Science; •4 years experience	\$ 55.00	\$ 121.28	\$ 121.28

Firm	Direct Salary Rates				Fully Burdened On-site Hourly Labor Rate	Fully Burdened Remote Hourly Labor Rate
	Name	Position/Classification (Work to be Performed)	Education/ Experience	Direct Hourly Labor Rate		
Delta Computer Solutions, Inc	Paula Wong	ITS Network Infrastructure Support	CCIE, MCSE, CCNA, Palo Alto (PSE), Palo Alto NSE (PCNSE) 7 •BS in Business Administration & Computer Information System •25 years experience	\$ 72.00	\$ 132.30	\$ 143.64
Delta Computer Solutions, Inc	James Cunningham	ITS Network Infrastructure Support	•CCNA, CCNP, MCDDBA; •BS in Applied Mathematics and Computing	\$ 66.00	\$ 121.28	\$ 131.67
Iteris, Inc.	Alek Hovsepian	ITS Project Support/Systems Engineer	•BS Electrical Engineering; •21 years experience	\$ 66.68	\$ 205.97	\$ 205.97
CharisTech Engineering, Inc.	Jennifer Mariani	Quality Control	•Doctor of Philosophy (PhD)	\$ 91.00	\$ 200.66	\$ 200.66

*\*Fully Burdened On-Site Hourly Labor Rate = Direct Hourly Rate x Multiplier listed in Table 2*

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

*On-Site Rates to be used for work assignments of a duration of at least 90 days and when consultant works over 50% of the time at SFMTA site*

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

Company	On-Site Overhead (%)	Remote Overhead (%)	MULTIPLIERS	
			On-Site	Remote
Parsons Transportation Group Inc.	94.06%	124.59%	2.04	2.36
Countervail Engineering	110.00%	110.00%	2.21	2.21
Lea+Elliott, Inc.	154.35%	175.92%	2.67	2.90
Systems Integration Resources	33.00%	38.00%	1.40	1.45
TranSIGHT	76.80%	91.80%	1.86	2.01
West Coast Consulting	110.00%	110.00%	2.21	2.21
Delta Computer Solutions, Inc	75.00%	90.00%	1.84	2.00
Iteris, Inc.	194.18%	194.18%	3.09	3.09
CharisTech Engineering, Inc.	110.00%	110.00%	2.21	2.21
Transit Systems Engineering, Inc.	121.30%	121.30%	2.32	2.32



