

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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISIONS:** Streets and Communications and Marketing

**BRIEF DESCRIPTION:**

Approving three contracts for as-needed consulting services for public outreach and engagement with Civic Edge Consulting, LLC (SFMTA-2022-24), Davis & Associates Communications, Inc. (SFMTA-2022-25), and K-I JV, (SFMTA-2022-26), each contract not to exceed \$3,025,000 and a term of five years.

**SUMMARY:**

- SFMTA requires assistance from qualified consultants to deliver SFMTA projects necessary to meet the goals and objectives of Vision Zero, MUNI Forward, the City’s Transit First Policy, the SFMTA’s Complete Streets Policy, and the SFMTA’s Strategic Plan.
- The consultant services to be procured under the proposed contracts include the planning and implementation of public outreach and engagement support services, and the design and development of communications materials.
- The SFMTA issued the Request for Proposals (RFP) No. SFMTA-2022-24 on October 12, 2021.
- Civic Edge Consulting, Davis & Associates Communications, Inc., and the joint venture of Katz & Associates and InterEthnica were the three responsive proposers.
- The SFMTA has placed a 25 percent Local Business Enterprise participation goal on each of the three contracts.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract with Consultant Civic Edge Consulting
3. Contract with Consultant Davis & Associates
4. Contract with Consultant Katz & Associate/InterEthnica Joint Venture

**APPROVALS:**

DIRECTOR   
SECRETARY 

**DATE**

March 30, 2022

March 29, 2022

**ASSIGNED SFMTAB CALENDAR DATE:** April 5, 2022

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### **PURPOSE**

Approving three contracts for as-needed consulting services for public outreach and engagement with Civic Edge Consulting, LLC (SFMTA-2022-24), Davis & Associates Communications, Inc. (SFMTA-2022-25), and K-I JV, (SFMTA-2022-26), each contract not to exceed \$3,025,000 and a term of five years.

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

This action supports the following SFMTA Strategic Plan Goals:

Goal 1: Identify and reduce disproportionate outcomes and resolve past harm towards marginalized communities.

Goal 4: Make streets safe for everyone

Goal 5: Deliver reliable and equitable transportation services

Goal 6: Eliminate pollution and greenhouse gas emissions by increasing use of transit, walking, and bicycling

Goal 7: Build stronger relationships with stakeholders

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

This action supports the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
4. Transit-priority improvements, such as designated transit lanes and streets and improved signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.
5. Pedestrian areas shall be enhanced wherever possible to improve the safety and comfort of pedestrians and to encourage travel by foot.
6. Bicycling shall be promoted by encouraging safe streets for riding, convenient access to transit, bicycle lanes, and secure bicycle parking.
7. Parking policies for areas well served by public transit shall be designed to encourage travel by public transit and alternative transportation.

**DESCRIPTION**

The purpose of the three as-needed contracts is to provide public outreach and engagement support to deliver projects and service improvements that are critical to achieving the SFMTA's Strategic Plan goals. To effectively lead and facilitate delivery of numerous SFMTA projects and to meet the goals and objectives of Vision Zero, MUNI Forward, the Transit First Policy and the Complete Streets policy, the Streets and Communications Divisions requires the assistance of consultants to perform specialized public outreach and engagement services. Such projects include, but are not limited to, public-facing capital initiatives such as Vision Zero, Muni Forward, and other projects that support the city's Transit-First and Vision Zero policies, such as the Folsom-Howard Streetscape Project, Powell Streetscape Project, Safer Taylor Project, Tenderloin Traffic Safety Outreach, Bayview Community Based Transportation Planning, Potrero Yard Modernization Project, Temporary Emergency Transit Lanes and Geary Boulevard Improvements Projects.

Many of San Francisco's transportation projects require significant public outreach efforts to ensure communities are aware of and have the opportunity to engage on projects that impact them. The SFMTA, however, lacks sufficient staffing resources to expeditiously provide high-quality public outreach and engagement services in connection with such transportation projects. Through as-needed contracts with various, qualified consultants, the SFMTA can utilize unique skill sets as appropriate to help plan and deliver public outreach and engagement services that incorporate best practices and are culturally competent with respect to our stakeholder communities and the public at-large.

The resources available through these as-needed contracts will also directly support the SFMTA's ability to implement the Public Participation Plan, a requirement of the Federal Transit Administration (FTA) that outlines the manner in which the SFMTA is expected to engage with the public based on the community's needs and preferences. Insights from a recent update of the Public Participation Plan, along with the SFMTA's Public Outreach and Engagement Team Strategy (POETS), provide guidance regarding outreach for public-facing projects. Consultants will provide support in implementing methodologies that specifically address linguistic, institutional, cultural, economic, historical, and other barriers that may be preventing minority, low-income, and limited-English proficient (LEP) populations from participating effectively in the SFMTA's decision-making process.

In the Fall of 2021, the SFMTA advertised a Request For Proposals (RFP) soliciting proposals from firms with expertise in public outreach and engagement. The scope of service for each RFP included:

1. Planning for public outreach and engagement.
2. Implementation of public outreach and engagement.
3. Design and development of communications materials.

The SFMTA issued the RFP on October 21, 2021, which provided for the selection of up to three firms and award of up to three contracts for five-year terms. There is no option to extend the contracts after their five-years term expire.

To encourage the consultants to subcontract with smaller, local vendors, each contract has a target participation goal in place for Local Business Enterprises (LBE). The subconsultant participation goal for each contract represents a percentage of the contract value based on the total cost of Task Orders issued. The SFMTA Contract Compliance Office monitors the value of Task Orders issued for each contract, and approves an individual participation goal for each Task Order at the time of issuance. The participation goal, or value, set for each Task Order is then measured against the overall goal set for the contract.

The table below identifies the funding source for each contract, the number and names of firms that submitted proposals in response to the RFP, and the applicable LBE participation goal.

<b>Contract Funding Source</b>	<b>Number of Proposals Received (Names of Proposers)</b>	<b>LBE Participation Goal</b>
LOCAL	3 (Civic Edge Consulting, Davis & Associates Communications, Inc., and a joint venture of Katz & Associates and InterEthnica)	LBE: 25%

The RFP resulted in three proposals that met the RFP requirements, the proposal from Civic Edge Consulting, the proposal from Davis & Associates Communications, Inc., and the proposal from the joint venture of Katz & Associates and InterEthnica.

Staff successfully concluded contract negotiations with the Civic Edge Consulting, Davis & Associates Communications, Inc., and the joint venture of Katz & Associates and InterEthnica. These firms will be the prime consultants and will be supported by a wide array of subconsultants. Each prime consultant and its respective subconsultant team is listed below.

**1. Civic Edge Consulting**

- a) Reflex Design Collective, Inc.
- b) lowercase productions
- c) MIG, Inc.
- d) En2action
- e) Slow Clap Productions, LLC
- f) FM3
- g) co:census

**2. Davis & Associates Communications, Inc.**

- a) Corey, Canapary, & Galanis
- b) EnviroIssue
- c) Rosales Business Partners
- d) Slow Clap Productions

- e) Imprinta

**3. Joint Venture of Katz & Associates and InterEthnica**

- a) Bonner Communications
- b) FivePaths
- c) InkleDesign
- d) JBR Partners, Inc.
- e) Margena Wade
- f) SlowClap Productions

The SFMTA will issues task orders to the consultants for as-needed public outreach consulting services. Depending on the SFMTA division that manages the specific services, either the Director of Streets or the Director of Communications and Marketing, at their discretion, will issue task orders to the consultants to perform the services. In certain circumstances, task orders may be issued following a request for competitive bids from each of the two consultants for each funding source. The directors or their designees will select the preferred bid based on a determination of which bid provides the best value. No single consultant is guaranteed assignment of task orders under their contract.

The three contracts proposed to be awarded are:

Item	Contract Number	Type of Funding	Not to Exceed Amount	Firm name
1	SFMTA – 2022-24	LOCAL	\$3,025,000	Civic Edge Consulting
2	SFMTA – 2022-25	LOCAL	\$3,025,000	Davis & Associates Communications, Inc.
3	SFMTA – 2022-26	LOCAL	\$3,025,000	Joint Venture: Katz & Associates/InterEthnica

The total sum not-to-exceed amount for all three contracts is \$9,075,000; each contract has a term not to exceed five years.

**STAKEHOLDER ENGAGEMENT**

No outreach was required for the award of these contracts. However, the International Federation of Professional and Technical Engineers, Local 21 was notified on August 24, 2020 as part of the approval process by the Department of Human Resources (DHR).

**ALTERNATIVES CONSIDERED**

The alternative to the local-funded as-needed services provided under the three contacts is for SFMTA to provide public outreach and engagement using existing resources available within the Agency and procure additional services separately for individual projects. This approach does not

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support the SFMTA's goal to deliver projects in a timely and effective manner, because contracting for individual projects requires additional time and can be challenging for relatively small projects, particularly when such projects require immediate attention.

### **FUNDING IMPACT**

The three contracts will be funded on an as needed basis primarily with state and local fund sources, such as Proposition K sales taxes, Transportation and Road Improvement General Obligation Bonds. The total not-to-exceed amount for each of the three contracts is \$3,025,000 (collectively \$9,075,000) with a five-year term. Consultants are not guaranteed that the Agency will issue task orders for that full amount.

### **ENVIRONMENTAL REVIEW**

On October 9, 2020, the SFMTA, under authority delegated by the San Francisco Planning Department, determined that the contracts for as-needed public outreach and engagement services are not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

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

At its September 20, 2021 meeting, the Civil Services Commission approved Personnel Services Contract (PSC) request No. 47099-20/21 for \$9,775,000 in connection with these contracts. This PSC request includes the \$9,075,000 in value for these three local contracts. The City Attorney's Office has reviewed the contracts, and there are no other approvals required.

### **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors approve the following three contracts:

- Contract #SFMTA-2022-24 (LOCAL) with Civic Edge Consulting, for As-Needed Public Outreach and Engagement services, for a total amount not to exceed \$3,025,000;
- Contract #SFMTA-2022-25 (LOCAL) with Davis & Associates Communications, Inc. for As-Needed Public Outreach and Engagement services, for a total amount not to exceed \$3,025,000;
- Contract #SFMTA-2022-26 (LOCAL) with the joint venture of Katz & Associates and InterEthnica for As-Needed Public Outreach and Engagement services, for a total amount not to exceed \$3,025,000;

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The SFMTA's Communications and Marketing Division is responsible for all aspects of the agency's internal and external communications, including community outreach, public relations, social media, marketing, creative services, and the SFMTA public website; and

WHEREAS, The SFMTA's Streets Division plans, designs, implements, and maintains the city's transportation infrastructure and regulations to support San Francisco's mobility needs as the city changes and grows; and

WHEREAS, Both divisions require the assistance of consulting resources to support project teams with planning and implementing culturally competent public outreach and engagement for better decision-making and more effective delivery of multi-modal transportation planning, engineering and operational improvement projects; and

WHEREAS, On October 21, 2021, the SFMTA advertised Request For Proposal (RFP) #SFMTA 2022-24 (LOCAL) soliciting proposals from firms with expertise in public outreach and engagement to provide as-needed services in the areas of (1) planning for public outreach and engagement, (2) implementation of public outreach and engagement, and (3) design and development of communications materials; and

WHEREAS, The SFMTA received three responsive proposals in response to the Request for Proposal from Civic Edge Consulting, Davis & Associates Communications, Inc., and the joint venture of Katz & Associates and InterEthnica; and

WHEREAS, The SFMTA's Equal Employment Opportunity office has confirmed the scoring and the proposers' commitment for meeting the respective 25 percent LBE participation goal for each of the proposed three contracts; and

WHEREAS, SFMTA staff has successfully completed contract negotiations with Civic Edge Consulting, Davis & Associates Communications, Inc., and the joint venture of Katz & Associates and InterEthnica; and

WHEREAS, On October 19, 2020, the Civil Service Commission approved the three proposed contracts under to Personal Services Contract request No. 47099-20/21; and

WHEREAS, On October 9, 2020, the SFMTA, under authority delegated by the Planning Department, determined that the contracts for As-Needed Public Outreach and Engagement Services are not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves Contract #SFMTA-2022-24 (LOCAL) for As-Needed Public Outreach and Engagement services with Civic Edge Consulting, as a joint venture, for a total amount not to exceed \$3,025,000, and a term not to exceed five years; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves Contract #SFMTA-2022-25 (LOCAL) with Davis & Associates Communications, Inc. for As-Needed Public Outreach and Engagement services, for a total amount not to exceed \$3,025,000, and a term not to exceed five years; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves Contract #SFMTA-2022-26 (LOCAL) for As-Needed Public Outreach and Engagement services with Katz & Associates/InterEthnica, as a joint venture, for a total amount not to exceed \$3,025,000, and a term not to exceed five years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of April 5, 2022.

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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**

**Civic Edge Consulting, LLC**

**Contract No. SFMTA-2022-24**

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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  
Civic Edge Consulting, LLC  
Contract No. SFMTA-2022-24**

This Agreement is made as of \_\_\_\_\_, in the City and County of San Francisco (City), State of California, by and between Civic Edge Consulting, LLC, a California Limited Liability Company (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 public outreach and engagement services.

**B.** This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through Request for Proposals (RFP) No. SFMTA-2022-24, issued on October 12, 2021, pursuant to which City selected Contractor as one of the highest-qualified scorers.

**C.** The Local Business Enterprise (LBE) subcontracting participation requirement for this Agreement is 25%.

**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. 47099-20/21 for this Agreement on October 4, 2021.

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

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

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

**1.7** “**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 Civic Edge Consulting, LLC, 101A Clay Street #267, Embarcadero 3, San Francisco, CA 94111.

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

**1.10** “**Day**” (whether or not capitalized) means a calendar day, unless otherwise 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** “**Party**” and “**Parties**” mean the City and Contractor either collectively or individually.

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

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

**1.18** “**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.

**1.19** “**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.

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

**1.21** “**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 five years from the Effective Date, unless earlier terminated as otherwise provided herein.

## **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.

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

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

(b) a negotiated number of hours per Task Order (using the fully burdened hourly labor rates set forth in Appendix B (Calculation of Charges) plus a fixed 7% profit for Contractor's Services and, if applicable, a markup for managing Subcontractors of no more than 3% of the fully burdened hourly rate) subject to a total not to exceed amount.

In no event shall the amount of this Agreement exceed Three Million and Twenty Five Thousand Dollars (\$3,025,000).

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

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

(b) **Overhead Rates.** The overhead rates in Appendix B shall be fixed at that level until 12 months after the date of award of this Agreement. Thereafter, during the term of this Agreement, Contractor may request to escalate these rates in accordance with the escalation-request process for direct hourly labor rates, described above.

(c) **Reimbursable Costs.** The standards and requirements for compensability of Contractor's expenses under this Agreement shall be as set out in the Office of Management and Budget (OMB) Circular A-87, Cost Principles For State, Local, and Indian Tribal Governments. Contractor understands the City does not intend to pay the Contractor for costs under this Agreement that would not be reimbursable to City from its funding agencies in accordance with Circular A-87; and that all payments under this Agreement are subject to audit and adjustment.

(d) **Out-of-Pocket Expenses.** The SFMTA will reimburse Contractor for the actual cost of approved out-of-pocket expenses for the prime Contractor and Subcontractors. Compensation for materials and other approved out-of-pocket expenses, other than travel, shall be at direct cost, plus a mark-up not to exceed 3%. Compensation for travel-related expenses shall be at direct cost without mark-up. All expenses required to perform a task must be described in detail in the Task Order scope of work and identified as a line item in the Task Order budget. If unforeseen expenses are required to perform the Task Order scope of work after the Task Order has been issued as a Purchase Order, such costs must be documented in detail and approved in writing by the SFMTA in the form of a Task Order modification. All travel expenses are to be pre-approved by the SFMTA and Contractor must obtain the best air fare available in a timely fashion. Receipts for all expenses must accompany the invoice.

(e) **Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses 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.

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

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

**3.4.4 Payment Limited to Satisfactory Services and Delivery of Goods.** Contractor is not entitled to any payments from City until the SFMTA approves the goods and/or

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

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

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

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

- (l) Contract Payment terms
- (m) Sales/use tax (if applicable)
- (n) Total costs

#### **3.4.4 Payment Terms**

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

(b) Reserved. (Payment Discount Terms)

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

**3.4.4 LBE Payment and Utilization Tracking System.** Contractor shall pay LBE subcontractors within three business days as provided under Chapter 14B.7(H)(9). Within ten business days of the SFMTA's payment of an invoice, Contractor shall confirm that all subcontractors have been paid via the B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CMD. Failure to submit all required payment information to the City's Financial System with each payment request may result in the withholding of 20% of the payment due under that invoice until the required payment information is provided.

#### **3.4.4 Payment for Goods and/or Services**

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

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

**3.5 Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after

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

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

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

**Article 4 Services and Resources**

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

**4.2 Task Order Requirements.** Contractor **shall perform the Services under Task Orders the SFMTA issues in accordance with the process described below.** The SFMTA will define requirements for Task Orders. The scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required 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.

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

**3.4.4 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.

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

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

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

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

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

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

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

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

- Proposed profit of Contractor's work effort as a fixed fee amount not to exceed seven percent of Contractor's estimated direct hourly labor rates and overhead costs (does not include Other Direct Costs (ODCs)); and

- For work performed by all Subcontractors, proposed total mark-up for Contractor on Subcontractor's work effort as a fixed fee not to exceed three percent of Subcontractor's total labor charges (does not include ODCs).

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

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

**3.4.4 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.

**3.4.4 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.

**3.4.4 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.

**3.4.4 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.

**3.4.4 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:

- Alia Al-Sharif
- Peter Lauterborn
- Rosie Dilger
- Abraham Vallin
- Jenny Zhou
- Christina Ancheta
- Ann Cheng
- Greg Greenway
- Brooke Station
- Ezra Kong
- Jennifer Pechacek
- Sarah Katsikas
- Deanna Chow Trotter
- Rebecca Graham
- Andrea Baker
- Pooja Rajani
- Dan Lichtenberg
- Pooja Rajani
- Dave Metz
- Lucia Del Puppo
- Tiasia O'Brien
- James O'Brien

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 4.2.3 above.

#### **4.7 Contractor Vaccination Policy**

**3.4.4** Contractor acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (Emergency Declaration), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (Contractor Vaccination Policy), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

**3.4.4** A contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. This Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. This Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

**3.4.4** In accordance with the Contractor Vaccination Policy, Contractor agrees that:

(a) Where applicable, Contractor shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Contractor an exemption based on medical or religious grounds; and

(b) If Contractor grants Covered Employees an exemption based on medical or religious grounds, Contractor will promptly notify the SFMTA by completing and submitting the Covered Employees Granted Exemptions Form (Exemptions Form), which can be

found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

#### **4.8 Subcontracting**

**3.4.4** 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.

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

- Reflex Design Collective, Inc.
- lowercase productions
- MIG, Inc.
- En2action, Inc.
- Slow Clap Productions, LLC
- FM3
- Co:census

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

**3.4.4 Independent Contractor.** For the purposes of this Section 4.8, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular

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

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

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

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

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

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance**

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

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

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

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

(d) Professional Liability 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) Reserved. (Technology Errors and Omissions Coverage).

(f) Reserved. (Cyber and Privacy Insurance).

(g) Reserved. (Pollution Liability Insurance).

### **3.4.4 Additional Insured Endorsements**

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

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

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

#### **3.4.4 Waiver of Subrogation Endorsements**

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

#### **3.4.4 Primary Insurance Endorsements**

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

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

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

#### **3.4.4 Other Insurance Requirements**

(a) 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Article 7 Payment of Taxes**

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

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

**3.4.4** 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.

**3.4.4** 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.

**3.4.4** 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.

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

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

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

**3.4.4 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.

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

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

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

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

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

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

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

**3.4.4 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.

**3.4.4 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.

**3.4.4 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.

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

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

**3.4.4** 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.

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

**3.4.4** 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.

**3.4.4** 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**

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

- 3.4.1 Payment Limited to Satisfactory Services and Delivery of Goods
- 3.5 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

**3.4.4** 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**

**3.4.4 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.

**3.4.4 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 25% 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**

**3.4.4** 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.

**3.4.4** 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: Matthew Boyle  
Administrative Analyst  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
[Matthew.Boyle@sfmta.com](mailto:Matthew.Boyle@sfmta.com)

To Contractor: Amber Shipley  
Partner  
Civic Edge Consulting, LLC  
101A Clay Street #267, Embarcadero 3  
San Francisco, CA 94111  
[hello@thecivicedge.com](mailto:hello@thecivicedge.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**

**3.4.4 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.

**3.4.4 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 October 26, 2021. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, and any implementing Task Orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

## **Article 12 SFMTA Specific Terms**

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

**3.4.4** 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.

**3.4.4** 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**

**3.4.4 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.

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

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

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

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

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

**3.4.4 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.

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

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

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

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

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

<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>San Francisco Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney</p> <p>n:\ptc\as2022\1000424\01588063.docx final</p>	<p><b>CONTRACTOR</b></p> <p><b>Civic Edge Consulting, LLC</b></p> <hr/> <p>Amber Shipley Partner</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: <b>0000022743</b></p>
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**Appendices:**

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

## **Appendix A Scope of Services**

### **I. Policy Context**

Contractor shall use the SFMTA's Public Outreach and Engagement Team Strategy (POETS) as guidance in preparing strategies, engagements, and Deliverables that are consistent with the SFMTA's standards below. All Task Orders are in place to help ensure the Project Managers meet the needs of community stakeholders while supporting the SFMTA's key policies, including but not limited to:

- SFMTA FY 2018-2020 Strategic Plan: [https://www.sfmta.com/sites/default/files/reports-and-documents/2018/04/sfmta\\_strategic\\_plan.pdf](https://www.sfmta.com/sites/default/files/reports-and-documents/2018/04/sfmta_strategic_plan.pdf)
- Transit First Policy (SF Charter, Article VIIA, SEC. 8A.115): [http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- Public Outreach and Engagement Requirements, see Appendix H.
- SFMTA Brand Standards, see Appendix I.
- Complete Streets Policy (SF Public Works Code, Article II, SEC. 2.4.13): [http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- Vision Zero Goal: <http://visionzerosf.org/>
- Better Streets Plan: <http://www.sfbetterstreets.org/>
- Bicycle Strategy: [https://www.sfmta.com/sites/default/files/BicycleStrategyFinal\\_0.pdf](https://www.sfmta.com/sites/default/files/BicycleStrategyFinal_0.pdf)
- Pedestrian Strategy: <http://archives.sfmta.com/cms/rpedmast/documents/1-29-13PedestrianStrategy.pdf>
- Walk First Program: <http://walkfirst.sfplanning.org/>

### **II. Scope of Services**

#### **A. General Description of Services**

Contractor will generally support SFMTA project teams with planning, crafting, and delivering best practices, and culturally competent outreach and engagement with stakeholder communities and the public at-large. Depending on the needs of the SFMTA and project team, a Task Order may include a request for comprehensive services for a project – from strategy/planning to execution and evaluation – or be limited to specific services or phases of the project.

## **B. Specific Tasks**

Specific Services may include, but are not limited to, the following tasks:

### **1. Planning for Public Outreach and Engagement**

- a. Create effective public participation plans that account for project requirements, funding needs and other related SFMTA projects. Contractor shall work with Project Managers to develop all necessary planning for the assigned project, as outlined by POETS. Plans must be consistent with the POETS and Public Outreach and Engagement Requirements and utilize industry best practices in culturally competent public participation, such as those developed by the International Association for Public Participation (IAP2).
- b. Develop communications assessments that consider, but are not limited to, the following elements:
  - i. Project objectives, goals, and requirements;
  - ii. Key stakeholders and project impacts by stakeholder;
  - iii. Communications and outreach priorities;
  - iv. Effectiveness metrics and methods of evaluation; and
  - v. Timelines for outreach in coordination with project planning, environmental clearance, design, construction and evaluation stages, as well as public hearings, SFMTA Board meetings, scoping hearings or other required Federal, State or local approvals.
- c. Develop outreach and communication plans that support project goals and objectives for public participation plans.
  - i. Create a comprehensive communications and outreach strategy that engages diverse stakeholders (including people left out of primary stakeholder groups, such as merchant and neighborhood associations), other affected parties, the public-at-large, inclusive of communities of concern;
  - ii. Outline communications and outreach tactics through key project phases;
  - iii. Identify opportunities for early outreach and engagement;
  - iv. Develop a toolkit of customized approaches to engage stakeholders on the project including digital and online tools;
  - v. Compile a customized stakeholder contact list;
  - vi. Outline key messages; and
  - vii. Identify coaching and training needs for project manager and staff, including media training, active listening, facilitation and mediation, negotiations and handling difficult people and situations.

2. Implementation of Public Outreach and Engagement
  - a. Assist with the implementation of outreach meetings, both in-person and online.
    - i. Schedule and reserve venues and provide logistical support for outreach meetings, inter- and intra-agency meetings, briefings, outreach at standing community events, celebratory events, tours and site visits, including transportation access, presentation set-up, sign-in, materials production and other duties as assigned;
    - ii. Ensure broad awareness among relevant audiences of scheduling and content for stakeholder and outreach meetings;
    - iii. Develop presentations (e.g., PowerPoint) and presentation boards for meetings;
    - iv. Facilitate meetings, public engagement events and activities;
    - v. Record meeting minutes, transcribe audio visual recordings and draft meeting debriefs;
    - vi. Track meeting attendance;
    - vii. Procure necessary tools and software for online outreach and engagement; and
    - viii. Promote engagement opportunities through traditional and digital advertising.
  - b. Collect and manage stakeholder engagement and feedback.
    - i. Conduct and facilitate formal and informal focus groups;
    - ii. Design and administer surveys using different formats, including online, phone, intercept and in-person interviews;
    - iii. Host design charrettes;
    - iv. Solicit on-site, in-person feedback through various channels including phone banking, surveying or polling mechanisms;
    - v. Conduct polling, balloting or other voting mechanisms for online or remote meetings;
    - vi. Set up and monitor hotlines, including working with 311 staff to triage project related calls; create new hotlines, as appropriate;
    - vii. Aggregate feedback to allow for detailed reporting and trend analysis;
    - viii. Prepare detailed outreach history summaries in preparation for legislative action or completion of project community phase, including:
      - (1) Reports documenting all public engagement activities;
      - (2) Photographs from engagement events;
      - (3) Compilation of main engagement themes (as described above); and
      - (4) Counts and analysis of the number of individuals and stakeholder groups participating; and
    - ix. Identify and procure specific collection and measurement tools, as needed.

- c. Maintain stakeholder contacts and correspondence.
    - i. Monitor, track and provide follow-up responses to constituent correspondence;
    - ii. Manage stakeholder concerns about scheduling meetings, logistics and notification protocol;
    - iii. Update and maintain project stakeholder contact database, including constituents who are on- and offline; and
    - iv. Develop expanded stakeholder mailing lists for mailings and email blasts to reach a broad public audience.
3. Design and Development of Communications Materials
- a. Collateral Materials
    - i. Following the SFMTA’s Brand Standards, write and design culturally competent and accessible project collateral materials, such as fact sheets, mailers, reports, and presentation decks and templates using maps, infographics, diagrams, renderings, illustrations and photographs;
    - ii. Translate materials for limited-English proficient audiences on request; and
    - iii. Ensure collateral formats are compliant with ADA accessibility standards.
  - b. Digital Assets
    - i. Assist in development and implementation of digital communications to support web pages, emails, blogs and social media;
    - ii. Draft project information for websites and for social media;
    - iii. Ensure digital assets are compliant with ADA accessibility standards;
    - iv. Provide social media monitoring services; and
    - v. Procure digital advertising as directed.
  - c. Video Production
    - i. Write, produce and edit videos that increase public understanding of project;
    - ii. Develop public dissemination plan for videos; and
    - iii. Translate videos for limited-English proficient audiences on request.
  - d. Miscellaneous Items
    - i. Develop customized give-away materials (i.e., “swag”) that support public interest and engagement; and
    - ii. Procure miscellaneous materials and supplies for meetings and presentations.

### **III. 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.

#### **IV. 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.

#### **V. Department Liaison**

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

**Appendix B  
Calculation of Charges**

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

<b>Firm</b>	<b>Name</b>	<b>Position / Classification</b>	<b>Education / Experience</b>	<b>Direct Hourly Labor Rate</b>	<b>Fully Burdened Hourly Labor Rate (Product of Direct Hourly Labor Rate x Multiplier)</b>
Civic Edge Consulting	Alia Al-Sharif	Partner	MPA, 10 years+ experience	\$58.82	\$250.00
Civic Edge Consulting	Peter Lauterborn	Vice President	BA, 14 years of experience	\$52.94	\$225.00
Civic Edge Consulting	Rosie Dilger	Vice President	BA, 15 years of experience	\$52.94	\$225.00
Civic Edge Consulting	Jenny Zhou	Senior Project Manager	BA, BA, 6 years experience	\$44.71	\$190.00
Civic Edge Consulting	Abraham Vallin	Senior Project Manager	AA, 4 years experience	\$44.71	\$190.00
Civic Edge Consulting	Cristina Ancheta	Project Manager	Some College, 32 years experience	\$38.82	\$165.00
Civic Edge Consulting	Greg Greenway	President, Greenway Consulting	BA, 22 years experience	N/A	\$125.00
Civic Edge Consulting	Ann Cheng	Owner / CEO, Ann Cheng Consulting	BS, 14 years experience	N/A	\$250.00
Reflex Design Collective, Inc.	Brooke Staton	Co-founder, Managing Partner	MPH, MCity Planning, 8 years experience	\$50.00	\$230.00
Reflex Design Collective, Inc.	Ezra Kong	Co-founder, Managing Partner	BA, 7 years experience	\$50.00	\$230.00
lowercase productions	Jennifer Pechacek	Senior Project Manager	MBA, 20 years experience	\$135.00	\$178.87
lowercase productions	Sarah Katsikas	Senior Project Designer	BS, 15 years experience	\$120.00	\$159.00
MIG, Inc.	Deanna Chow Trotter	Principal, Director of Marketing Strategy	BA, MBA, 25 years experience	\$79.33	\$243.44
MIG, Inc.	Rebecca Graham	Project Manager	BA, 15 years experience	\$49.52	\$151.96
En2action	Andrea Baker	CEO / Executive Director	BS, 40 years of experience	\$84.00	\$250
En2action	Pooja Rajani	Director of Programs	MBA, MPH, 13 years experience	\$53.84	\$175

<b>Firm</b>	<b>Name</b>	<b>Position / Classification</b>	<b>Education / Experience</b>	<b>Direct Hourly Labor Rate</b>	<b>Fully Burdened Hourly Labor Rate (Product of Direct Hourly Labor Rate x Multiplier)</b>
Slow Clap Productions, LLC	Dan Lichtenberg	CEO, Creative Director, and Project Manager	BFA, MFA, 14 years experience	\$90.00	\$157.50
Slow Clap Productions, LLC	Cassandra Jabola	Senior Producer	BA, 13 years experience	\$90.00	\$157.50
FM3	Dave Metz	Partner & President – Project Lead	MA, 23 years experience	\$98.28	\$200.00
FM3	Lucia Del Puppo	Vice President – Assistant Project Lead	MA, 11 years experience	\$73.71	\$150.00
co:census	Tiasia O'Brien	Research Design Principal	MA, 10 years experience	\$83.06	\$250.00
co:census	James O'Brien	Account Manager	MA, 10 years experience	\$75.00	\$225.00

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

<b>Firm</b>	<b>Overhead (%)</b>	<b>Multiplier</b>
Civic Edge Consulting	325.0%	4.25
Reflex Design Collective, Inc.	360.0%	4.6
lowercase productions	32.5%	1.325
MIG, Inc.	207.0%	3.07
En2action	225.0%	3.25
Slow Clap Productions, LLC	75.0%	1.75
FM3	104.1%	2.041
co:census	201.0%	3.01

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

<b>1.</b> Profit shall not to exceed 7%.
<b>2.</b> Prime Contractor markup on labor performed by Subcontractor shall not to exceed 3%.

**Table 3: Other direct cost (ODC) items required to complete the work shall be compensated as described in Section 3.3.2(d) of this Agreement.**

<b>Other Costs</b>	
<b>Item</b>	<b>Cost</b>
Interpretation	at cost
Translations	at cost
Copies (Color)	\$.50 / page
Postage / Phone	at cost
Online Surveys	at cost
Eblasts	at cost
Mileage	IRS rate

**Appendix C**  
**Sample Task Order Request Form**

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

**APPROVALS**

<b>Requested by:</b>	Name, Title	<b>Date</b> _____
<b>Reviewed by:</b>	Name, Contract Compliance Office	<b>Date</b> _____
<b>Approved by:</b>	Division Director, Title	<b>Date</b> _____

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

**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**

**Davis & Associates Communications, Inc.**

**Contract No. SFMTA-2022-25**

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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  
Davis & Associates Communications, Inc.  
Contract No. SFMTA-2022-25**

This Agreement is made as of \_\_\_\_\_, in the City and County of San Francisco (City), State of California, by and between Davis & Associates Communications, Inc., 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 public outreach and engagement services.

**G.** This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through Request for Proposals (RFP) No. SFMTA-2022-24, issued on October 12, 2021, pursuant to which City selected Contractor as one of the highest-qualified scorers.

**H.** The Local Business Enterprise (LBE) subcontracting participation requirement for this Agreement is 25%.

**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. 47099-20/21 for this Agreement on October 4, 2021.

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

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

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

**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 Davis & Associates Communications, Inc., 1388 Sutter Street, Suite 510, San Francisco, CA 94109.

**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 five years from the Effective Date, unless earlier terminated as otherwise provided herein.

## **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.

**3.4.4 Amount.** Contractor's compensation for the Services it performs under Task Orders shall be based on a negotiated number of hours per Task Order (using the fully burdened hourly labor rates set forth in Appendix B (Calculation of Charges) plus a fixed 10% profit for Contractor's Services and, if applicable, a markup for managing Subcontractors of no more than 5% of the fully burdened hourly rate) subject to a total not to exceed amount.

In no event shall the amount of this Agreement exceed Three Million and Twenty Five Thousand Dollars (\$3,025,000).

**3.4.4 Method of Computing Compensation.** Contractor's compensation for Task Orders shall be as described below.

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

**(b) Overhead Rates**

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

**(ii)** The overhead rates in Appendix B, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within 180 days of the end of Contractor's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Contractor shall submit to the Project Manager Contractor's and all Subcontractors' actual rates during the term of this Agreement. For each rate paid to the Contractor that exceeds the Contractor's or any Subcontractor's actual rate, the Contractor shall reimburse to the City the total difference between the rate paid and Contractor's or Subcontractor's actual rate during the term of this Agreement. Contractor shall reimburse City within 30 days of written notice from City seeking reimbursement. For each actual overhead rate of Contractor or Subcontractor that exceeds the rate paid to Contractor, City

shall pay to Contractor the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Contractor within 60 days of City's receipt of all of Contractor's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Contractor's rates as provided above.

(c) **Reimbursable Costs.** The standards and requirements for compensability of Contractor's expenses under this Agreement shall be as set out in the Office of Management and Budget (OMB) Circular A-87, Cost Principles For State, Local, and Indian Tribal Governments. Contractor understands the City does not intend to pay the Contractor for costs under this Agreement that would not be reimbursable to City from its funding agencies in accordance with Circular A-87; and that all payments under this Agreement are subject to audit and adjustment.

(d) **Out-of-Pocket Expenses.** The SFMTA will reimburse Contractor for the actual cost of approved out-of-pocket expenses for the prime Contractor and Subcontractors. Compensation for materials and other approved out-of-pocket expenses, other than travel, shall be at direct cost, plus a mark-up not to exceed 5%. Compensation for travel-related expenses shall be at direct cost without mark-up. The mark-up for media buys shall not exceed 7%. The mark-up for media buys shall be applied by either the Contractor or Subcontractor, whichever is making the purchase, and shall not be combined with the 5% mark-up for other approved out-of-pocket expenses. All expenses required to perform a task must be described in detail in the Task Order scope of work and identified as a line item in the Task Order budget. If unforeseen expenses are required to perform the Task Order scope of work after the Task Order has been issued as a Purchase Order, such costs must be documented in detail and approved in writing by the SFMTA in the form of a Task Order modification. All travel expenses are to be pre-approved by the SFMTA and Contractor must obtain the best air fare available in a timely fashion. Receipts for all expenses must accompany the invoice.

(e) **Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses 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.

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

transit. The City reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

**17.4 Calculation of Charges.** Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed (including goods delivered, if any) in the immediately preceding month, unless a different schedule is set out in Appendix B. Compensation shall be made for goods and/or Services identified in the invoice that the Director of Transportation or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. In no event shall the City be liable for interest or late charges for any late payments. The City will only pay for Services requested and received; the City will not honor retainer or “minimum service order” charges.

**3.4.4 Payment Limited to Satisfactory Services and Delivery of Goods.**

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

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

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

- (o) Contract Number
- (p) Task Order Number
- (q) Purchase Order Number for the Task Order
- (r) A copy of the receipts for all expenses invoiced
- (s) Description of the Services performed and/or goods delivered
- (t) PeopleSoft Supplier Name and ID
- (u) Name, position, direct hourly rate and hours worked of

employee(s) whose labor is invoiced; except where Contractor invoices for a deliverable that is priced in the Task Order as a lump sum, or as estimated milestone payments described in the Task Order budget

- (v) Other direct cost
- (w) Subcontractor costs supported by invoice itemization in the same format as described here
- (x) Profit for current invoice period. Profit will be calculated as a prorated portion of the total labor charges for the task for which Contractor seeks payment. Profit will be for an amount not to exceed 10% of the total Contract value
- (y) Total mark up for current invoice period for all Subcontractor's work effort for that invoice period as an amount not to exceed 5% of Subcontractor's total labor charges
- (z) Contract Payment terms
- (aa) Sales/use tax (if applicable)
- (bb) Total costs

#### 3.4.4 Payment Terms

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

(b) Reserved. (Payment Discount Terms)

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

**3.4.4 LBE Payment and Utilization Tracking System.** Contractor shall pay LBE subcontractors within three business days as provided under Chapter 14B.7(H)(9). Within ten business days of the SFMTA's payment of an invoice, Contractor shall confirm that all subcontractors have been paid via the B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CMD. Failure to submit all required payment information to the City's Financial System with each payment request may result in the withholding of 20% of the payment due.

#### 3.4.4 Payment for Goods and/or Services

(a) The City utilizes the Paymode-X<sup>®</sup> service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic

payments to be paid under this Agreement. To sign up for electronic payments, visit [http://portal.paymode.com/city\\_countyofsanfrancisco](http://portal.paymode.com/city_countyofsanfrancisco).

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

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

**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 stated in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services

beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5 (Modification of this Agreement).

**18.2 Task Order Requirements.** Contractor shall perform the Services under Task Orders the SFMTA issues in accordance with the process described below. The SFMTA will define requirements for Task Orders. The scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required 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.

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

**3.4.4 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.

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

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

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

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

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

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

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

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

- Proposed profit of Contractor's work effort as a fixed fee amount not to exceed 10% of Contractor's estimated direct hourly labor rates and overhead costs (does not include Other Direct Costs (ODCs)); and
- For work performed by all Subcontractors, proposed total mark-up for Contractor on Subcontractor's work effort as a fixed fee not to exceed 5% of Subcontractor's total labor charges (does not include ODCs).

**3.4.4 Negotiation of Cost and Profit.** The SFMTA Project Manager will review the Task Order proposal and negotiate with Contractor pricing for the Task Order, which shall be an amount not to exceed actual direct costs plus a negotiated fixed mark-up and profit in accordance with this Agreement.

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

**3.4.4 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.

**3.4.4 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.

**3.4.4 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.

**3.4.4 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.

**3.4.4 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:

- Darolyn Davis
- Laura Burch
- Trish Abbot
- Rylee Edge
- Yvette Tam
- Kitt Grant
- Vincent Mazzaferro
- Marcus Rodriguez
- Ariella Flatt
- Scott Carlson
- Kelly Scheurer
- Surlene Grant
- Lewis Michaelson
- Jhamere Howard
- Carol Anne Carroll
- Jon Canapary
- Steve Kral
- Ara Swanson
- Frankie Burton
- Katie DeLeu
- Layne Ahlstrom
- Jose Posada
- Ronald W. Wong
- Joe Fernandez Zago
- Mandy Xu
- Julio Esperias
- Wilson Truong
- Daniel Lichtenberg
- Cassandra Jabola
- Mara E. Rosales
- Elisa Uribe McCannon

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 4.2.3 above.

### **18.7 Contractor Vaccination Policy**

**3.4.4** Contractor acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (Emergency Declaration), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (Contractor Vaccination Policy), as those

documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

**3.4.4** A contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. This Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. This Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

**3.4.4** In accordance with the Contractor Vaccination Policy, Contractor agrees that:

(a) Where applicable, Contractor shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Contractor an exemption based on medical or religious grounds; and

(b) If Contractor grants Covered Employees an exemption based on medical or religious grounds, Contractor will promptly notify the SFMTA by completing and submitting the Covered Employees Granted Exemptions Form (Exemptions Form), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

## **18.8 Subcontracting**

**3.4.4** 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.

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

- Corey, Canapary, & Galanis Research
- EnviroIssues
- Imprenta
- Slow Clap Productions, LLC
- Rosales Business Partners

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

**3.4.4 Independent Contractor.** For the purposes of this Section 4.8, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**3.4.4 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.

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

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

## **Article 19 Insurance and Indemnity**

### **19.1 Insurance**

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

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

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

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

(d) Professional Liability 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) Reserved. (Technology Errors and Omissions Coverage).

(f) Reserved. (Cyber and Privacy Insurance).

(g) Reserved. (Pollution Liability Insurance).

#### **3.4.4 Additional Insured Endorsements**

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

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

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

#### **3.4.4 Waiver of Subrogation Endorsements**

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

#### **3.4.4 Primary Insurance Endorsements**

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

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

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

### 3.4.4 Other Insurance Requirements

(a) 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.

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

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

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

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

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

**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.

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

**3.4.4 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:

**3.4.4** 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.

**3.4.4** 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.

**3.4.4** 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.

**3.4.4** 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. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

## **Article 22 Termination and Default**

### **22.1 Termination for Convenience**

**3.4.4 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.

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

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

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

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

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

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

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

**3.4.4 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.

**3.4.4 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.

**3.4.4 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.

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

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

**3.4.4** 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.

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

**3.4.4** 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.

**3.4.4** 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**

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

- 3.4.1 Payment Limited to Satisfactory Services and Delivery of Goods
- 3.5 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

**3.4.4** 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**

**3.4.4 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.

**3.4.4 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 25% 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**

**3.4.4** 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.

**3.4.4** 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: Matthew Boyle  
Administrative Analyst  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
[Matthew.Boyle@sfmta.com](mailto:Matthew.Boyle@sfmta.com)

To Contractor: Darolyn Davis  
President & CEO  
Davis & Associates Communications, Inc.  
1388 Sutter Street, Suite 510  
San Francisco, CA 94109  
[darolyn@davis-pr.com](mailto:darolyn@davis-pr.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.

**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**

**3.4.4 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.

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

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

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

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

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

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

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

**25.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing Task Orders, the RFP, and Contractor's proposal dated October 26, 2021. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, and any implementing Task Orders shall control over the RFP and

the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

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

## **Article 26 SFMTA Specific Terms**

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

**3.4.4** 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.

**3.4.4** 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**

**3.4.4 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.

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

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

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

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

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

**3.4.4 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.

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

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

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

## **Article 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>San Francisco Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p><b>Davis &amp; Associates Communications, Inc.</b></p> <hr/> <p>Darolyn Davis President &amp; CEO</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: <b>0000021678</b></p>
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**Appendices:**

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

## **Appendix A Scope of Services**

### **III. Policy Context**

Contractor shall use the SFMTA's Public Outreach and Engagement Team Strategy (POETS) as guidance in preparing strategies, engagements, and Deliverables that are consistent with the SFMTA's standards below. All Task Orders are in place to help ensure the Project Managers meet the needs of community stakeholders while supporting the SFMTA's key policies, including but not limited to:

- SFMTA FY 2018-2020 Strategic Plan:  
[https://www.sfmta.com/sites/default/files/reports-and-documents/2018/04/sfmta\\_strategic\\_plan.pdf](https://www.sfmta.com/sites/default/files/reports-and-documents/2018/04/sfmta_strategic_plan.pdf)
- Transit First Policy (SF Charter, Article VIIA, SEC. 8A.115):  
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- Public Outreach and Engagement Requirements, see Appendix H.
- SFMTA Brand Standards, see Appendix I.
- Complete Streets Policy (SF Public Works Code, Article II, SEC. 2.4.13):  
[http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- Vision Zero Goal: <http://visionzerosf.org/>
- Better Streets Plan: <http://www.sfbetterstreets.org/>
- Bicycle Strategy:  
[https://www.sfmta.com/sites/default/files/BicycleStrategyFinal\\_0.pdf](https://www.sfmta.com/sites/default/files/BicycleStrategyFinal_0.pdf)
- Pedestrian Strategy: <http://archives.sfmta.com/cms/rpedmast/documents/1-29-13PedestrianStrategy.pdf>
- Walk First Program: <http://walkfirst.sfplanning.org/>

### **IV. Scope of Services**

#### **C. General Description of Services**

Contractor will generally support SFMTA project teams with planning, crafting, and delivering best practices, and culturally competent outreach and engagement with stakeholder communities and the public at-large. Depending on the needs of the SFMTA and project team, a Task Order may include a request for comprehensive services for a project – from strategy/planning to execution and evaluation – or be limited to specific services or phases of the project.

## **D. Specific Tasks**

Specific Services may include, but are not limited to, the following tasks:

### **1. Planning for Public Outreach and Engagement**

- d. Create effective public participation plans that account for project requirements, funding needs and other related SFMTA projects. Contractor shall work with Project Managers to develop all necessary planning for the assigned project, as outlined by POETS. Plans must be consistent with the POETS and Public Outreach and Engagement Requirements and utilize industry best practices in culturally competent public participation, such as those developed by the International Association for Public Participation (IAP2).
- e. Develop communications assessments that consider, but are not limited to, the following elements:
  - i. Project objectives, goals, and requirements;
  - ii. Key stakeholders and project impacts by stakeholder;
  - iii. Communications and outreach priorities;
  - iv. Effectiveness metrics and methods of evaluation; and
  - v. Timelines for outreach in coordination with project planning, environmental clearance, design, construction and evaluation stages, as well as public hearings, SFMTA Board meetings, scoping hearings or other required Federal, State or local approvals.
- f. Develop outreach and communication plans that support project goals and objectives for public participation plans.
  - i. Create a comprehensive communications and outreach strategy that engages diverse stakeholders (including people left out of primary stakeholder groups, such as merchant and neighborhood associations), other affected parties, the public-at-large, inclusive of communities of concern;
  - ii. Outline communications and outreach tactics through key project phases;
  - iii. Identify opportunities for early outreach and engagement;
  - iv. Develop a toolkit of customized approaches to engage stakeholders on the project including digital and online tools;
  - v. Compile a customized stakeholder contact list;
  - vi. Outline key messages; and
  - vii. Identify coaching and training needs for project manager and staff, including media training, active listening, facilitation and mediation, negotiations and handling difficult people and situations.

2. Implementation of Public Outreach and Engagement
  - d. Assist with the implementation of outreach meetings, both in-person and online.
    - ix. Schedule and reserve venues and provide logistical support for outreach meetings, inter- and intra-agency meetings, briefings, outreach at standing community events, celebratory events, tours and site visits, including transportation access, presentation set-up, sign-in, materials production and other duties as assigned;
    - x. Ensure broad awareness among relevant audiences of scheduling and content for stakeholder and outreach meetings;
    - xi. Develop presentations (e.g., PowerPoint) and presentation boards for meetings;
    - xii. Facilitate meetings, public engagement events and activities;
    - xiii. Record meeting minutes, transcribe audio visual recordings and draft meeting debriefs;
    - xiv. Track meeting attendance;
    - xv. Procure necessary tools and software for online outreach and engagement; and
    - xvi. Promote engagement opportunities through traditional and digital advertising.
  - e. Collect and manage stakeholder engagement and feedback.
    - x. Conduct and facilitate formal and informal focus groups;
    - xi. Design and administer surveys using different formats, including online, phone, intercept and in-person interviews;
    - xii. Host design charrettes;
    - xiii. Solicit on-site, in-person feedback through various channels including phone banking, surveying or polling mechanisms;
    - xiv. Conduct polling, balloting or other voting mechanisms for online or remote meetings;
    - xv. Set up and monitor hotlines, including working with 311 staff to triage project related calls; create new hotlines, as appropriate;
    - xvi. Aggregate feedback to allow for detailed reporting and trend analysis;
    - xvii. Prepare detailed outreach history summaries in preparation for legislative action or completion of project community phase, including:
      - (5) Reports documenting all public engagement activities;
      - (6) Photographs from engagement events;
      - (7) Compilation of main engagement themes (as described above); and
      - (8) Counts and analysis of the number of individuals and stakeholder groups participating; and
    - xviii. Identify and procure specific collection and measurement tools, as needed.

- f. Maintain stakeholder contacts and correspondence.
    - v. Monitor, track and provide follow-up responses to constituent correspondence;
    - vi. Manage stakeholder concerns about scheduling meetings, logistics and notification protocol;
    - vii. Update and maintain project stakeholder contact database, including constituents who are on- and offline; and
    - viii. Develop expanded stakeholder mailing lists for mailings and email blasts to reach a broad public audience.
3. Design and Development of Communications Materials
- e. Collateral Materials
    - iv. Following the SFMTA’s Brand Standards, write and design culturally competent and accessible project collateral materials, such as fact sheets, mailers, reports, and presentation decks and templates using maps, infographics, diagrams, renderings, illustrations and photographs;
    - v. Translate materials for limited-English proficient audiences on request; and
    - vi. Ensure collateral formats are compliant with ADA accessibility standards.
  - f. Digital Assets
    - vi. Assist in development and implementation of digital communications to support web pages, emails, blogs and social media;
    - vii. Draft project information for websites and for social media;
    - viii. Ensure digital assets are compliant with ADA accessibility standards;
    - ix. Provide social media monitoring services; and
    - x. Procure digital advertising as directed.
  - g. Video Production
    - iv. Write, produce and edit videos that increase public understanding of project;
    - v. Develop public dissemination plan for videos; and
    - vi. Translate videos for limited-English proficient audiences on request.
  - h. Miscellaneous Items
    - iii. Develop customized give-away materials (i.e., “swag”) that support public interest and engagement; and
    - iv. Procure miscellaneous materials and supplies for meetings and presentations.

## **VI. 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.

## **VII. 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.

## **VIII. Department Liaison**

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

**Appendix B  
Calculation of Charges**

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

<b>Firm</b>	<b>Name</b>	<b>Position / Classification</b>	<b>Education / Experience</b>	<b>Direct Hourly Labor Rate</b>	<b>Fully Burdened Hourly Labor Rate (Product of Direct Hourly Labor Rate x Multiplier)</b>
D&A Communications	Darolyn Davis	Principal in Charge	BA, 25+ years experience	\$81.75	\$250.00
D&A Communications	Laura Burch	Project Manager	BA, 20+ years experience	\$65.40	\$200.00
D&A Communications	Surlene Grant	Public Outreach & Engagement Strategy and Facilitation	MA, 20+ years of experience	\$68.87	\$210.00
D&A Communications	Lewis Michaelson	IAP2 Public Outreach Strategy & Facilitation	MS, 30+ years of experience	\$81.75	\$250.00
D&A Communications	Vincent Mazzaferro	Public Outreach & Community Engagement	BA, 11+ years of experience	\$55.59	\$170.00
D&A Communications	Jhamere Howard	Public Outreach & Community Engagement	BA, 7+ years of experience	\$55.59	\$170.00
D&A Communications	Trish Abbot	Content Development & Integrated Communications	BA, 20+ years experience	\$63.77	\$195.00
D&A Communications	Yvette Tam	Creative Direction	BFA, 20+ years experience	\$55.59	\$170.00
D&A Communications	Kitt Grant	Content Development & Public Outreach	MA, 15+ years of experience	\$60.50	\$185.00
D&A Communications	Marcus Rodriguez	Graphic Design, Videography & Photography	MA, 5+ years of experience	\$50.69	\$155.00
D&A Communications	Ariella Flatt	Content Development & Integrated Communications	BM, 6+ years of experience	\$47.42	\$145.00
D&A Communications	Scott Carlson	Public Outreach & Community Engagement	BA, 5+ years of experience	\$44.15	\$135.00
D&A Communications	Kelly Scheurer	Public Outreach & Community Engagement	BA, 3+ years of experience	\$44.15	\$135.00
D&A Communications	Rylee Edge	Public Outreach & Community Engagement	BS, 5+ years of experience	\$44.15	\$135.00
Corey, Canapary, & Galanis	Jon Canapary	Research & Surveys	BA, 20+ years experience	\$70.82	\$135.27
Corey, Canapary, & Galanis	Carol Anne Carrol	Research & Surveys	HSDG, 12+ years of experience	\$44.81	\$85.59

<b>Firm</b>	<b>Name</b>	<b>Position / Classification</b>	<b>Education / Experience</b>	<b>Direct Hourly Labor Rate</b>	<b>Fully Burdened Hourly Labor Rate (Product of Direct Hourly Labor Rate x Multiplier)</b>
Corey, Canapary, & Galanis	Steve Kral	Research & Surveys	ME, 13+ years of experience	\$39.57	\$75.58
EnviroIssues	Katie DeLeuw	Public Outreach & Community Engagement	MA, 15+ years of experience	\$70.00	\$196.70
EnviroIssues	Frankie Burton	Public Outreach & Community Engagement	BA, 15+ years of experience	\$51.00	\$143.31
EnviroIssues	Jose Posada	Public Outreach & Community Engagement	MA, 10+ years of experience	\$45.00	\$126.45
EnviroIssues	Layne Ahlstrom	Public Outreach & Community Engagement	BA, 3+ years of experience	\$38.00	\$106.78
EnviroIssues	Ara Swanson	Public Outreach & Community Engagement	BA, 18+ years of experience	\$69.00	\$193.89
Imprenta	Ronald Wong	Translation & Multicultural Outreach & Community Engagement	BA, 30+ years of experience	\$103.85	\$151.62
Imprenta	Joe Fernandez Zago	Translation & Multicultural Outreach & Community Engagement	BA, 25+ years experience	\$98.08	\$143.19
Imprenta	Mandy Xu	Translation & Multicultural Outreach & Community Engagement	MA, 11+ years of experience	\$38.80	\$56.65
Imprenta	Wilson Truong	Translation & Multicultural Outreach & Community Engagement	BS, 11+ years of experience	\$34.46	\$50.31
Imprenta	Julio Esperias	Translation & Multicultural Outreach & Community Engagement	BA, 5+ years of experience	\$34.46	\$50.31
Rosales Business Partners	Mara Rosales	Multicultural Outreach & Community Engagement	JD, 25+ years of experience	\$80.00	\$200.00
Rosales Business Partners	Elisa Uribe McCannon	Multicultural Outreach & Community Engagement	ME, 15+ years experience	\$62.00	\$155.00
Slow Clap Productions	Daniel Lichtenberg	Video Creation	MFA, 14+ years of experience	\$90.00	\$157.50
Slow Clap Productions	Cassandra Jabola	Video Creation	BA, 12+ years of experience	\$90.00	\$157.50

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

<b>Firm</b>	<b>Overhead (%)</b>	<b>Multiplier</b>
Davis & Associates Communications, Inc.	206%	3.06
Corey, Canapary, & Galanis	91%	1.91
EnviroIssue	181%	2.81
Rosales Business Partners	150%	2.5
Slow Clap Productions	75%	1.75
Imprenta	46%	1.46

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

<b>3.</b> Profit for Contractor’s Services shall not exceed 10%.
<b>4.</b> Prime Contractor markup on labor performed by Subcontractor shall not exceed 5%.

**Other direct cost (ODC) items required to complete the work shall be compensated as described in Section 3.3.2(d) of this Agreement.**





**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**

**K-I JV**

**Contract No. SFMTA-2022-26**

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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  
K-I JV  
Contract No. SFMTA-2022-26**

This Agreement is made as of \_\_\_\_\_, in the City and County of San Francisco (City), State of California, by and between K-I JV (Contractor), a joint venture between Katz & Associates, Inc., a California corporation, and InterEthnica, Inc., a California corporation, 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 public outreach and engagement services.

**L.** This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through Request for Proposals (RFP) No. SFMTA-2022-24, issued on October 12, 2021, pursuant to which City selected Contractor as one of the highest-qualified scorers.

**M.** The Local Business Enterprise (LBE) subcontracting participation requirement for this Agreement is 25%.

**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. 47099-20/21 for this Agreement on October 4, 2021.

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

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

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

**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 K-I JV, a joint venture between Katz & Associates, Inc., 1450 Frazee Road, Suite 200, San Diego, CA 92108, and InterEthnica, Inc., 52 Washburn Street, San Francisco, CA 94103.

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

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

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

**29.18** “**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.

**29.19** “**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.

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

**29.21** “**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 five years from the Effective Date, unless earlier terminated as otherwise provided herein.

### **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.

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

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

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

In no event shall the amount of this Agreement exceed Three Million and Twenty Five Thousand Dollars (\$3,025,000).

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

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

(b) **Overhead Rates**

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

(ii) The overhead rates in Appendix B, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this

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

(c) **Reimbursable Costs.** The standards and requirements for compensability of Contractor's expenses under this Agreement shall be as set out in the Office of Management and Budget (OMB) Circular A-87, Cost Principles For State, Local, and Indian Tribal Governments. Contractor understands the City does not intend to pay the Contractor for costs under this Agreement that would not be reimbursable to City from its funding agencies in accordance with Circular A-87; and that all payments under this Agreement are subject to audit and adjustment.

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

(e) **Non-Reimbursable Expenses.** 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.

(f) **Use of Public Transportation.** San Francisco is a transit-first city, and the SFMTA encourages Contractor and Subcontractors to use public transit in performance

of its services to the maximum extent possible. The SFMTA will closely review the Contractor's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Taxicabs and hired cars are not considered public transit. The City reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

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

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

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

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

(cc) Contract Number

- (dd) Task Order Number
- (ee) Purchase Order Number for the Task Order
- (ff) A copy of the receipts for all expenses invoiced
- (gg) Description of the Services performed and/or goods delivered
- (hh) PeopleSoft Supplier Name and ID
- (ii) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced; except where Contractor invoices for a deliverable that is priced in the Task Order as a lump sum, or as estimated milestone payments described in the Task Order budget
- (jj) Other direct cost
- (kk) Subcontractor costs supported by invoice itemization in the same format as described here
- (ll) Profit for current invoice period. Profit will be calculated as a prorated portion of the total labor charges for the task for which Contractor seeks payment. Profit will be for an amount not to exceed seven percent of the total Contract value
- (mm) Total mark up for current invoice period for all Subcontractor's work effort for that invoice period as an amount not to exceed three percent of Subcontractor's total labor charges
- (nn) Contract Payment terms
- (oo) Sales/use tax (if applicable)
- (pp) Total costs

#### 3.4.4 Payment Terms

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

(b) Reserved. (Payment Discount Terms)

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

**3.4.4 LBE Payment and Utilization Tracking System.** Contractor shall pay LBE subcontractors within three business days as provided under Chapter 14B.7(H)(9). Within ten business days of the SFMTA's payment of an invoice, Contractor shall confirm that all subcontractors have been paid via the B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CMD. Failure to submit all required payment information to the

City's Financial System with each payment request may result in the withholding of 20% of the payment due.

#### **3.4.4 Payment for Goods and/or Services**

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

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

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

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

**32.2 Task Order Requirements.** Contractor shall perform the Services under Task Orders the SFMTA issues in accordance with the process described below. The SFMTA will define requirements for Task Orders. The scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required 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.

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

**3.4.4 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.

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

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

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

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

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

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

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

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

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

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

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

**3.4.4 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.

**3.4.4 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.

**3.4.4 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.

**3.4.4 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.

**3.4.4 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.

**3.2.3 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:

- Greg Parks
- Emily Otis
- Jim McHugh
- Mahmoud Abunie
- Nicolas Townes
- David Hopkins
- Matthew Bennett
- Camilo (JC) Eckstine-Gomez
- Lisa Abboud
- Mona Abboud
- Deborah Oh
- Elena Castanon
- Ariana Silva
- Mandy Yu
- Monica Wong
- Ayali Puerta
- Noelle Bonner
- Eric Leland
- Inke Noel
- James Bryant
- Margena Wade
- Daniel Lichtenberg

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 4.2.3 above.

### **32.7 Contractor Vaccination Policy**

**3.4.4** Contractor acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (Emergency Declaration), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (Contractor Vaccination Policy), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

**3.4.4** A contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. This Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. This Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

**3.4.4** In accordance with the Contractor Vaccination Policy, Contractor agrees that:

(a) Where applicable, Contractor shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Contractor an exemption based on medical or religious grounds; and

(b) If Contractor grants Covered Employees an exemption based on medical or religious grounds, Contractor will promptly notify the SFMTA by completing and submitting the Covered Employees Granted Exemptions Form (Exemptions Form), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

## **32.8 Subcontracting**

**3.4.4** 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.

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

- Bonner Communications
- FivePaths LLC
- InkeDesign Consulting LLC
- Slow Clap Productions, LLC
- JBR Partners, Inc.
- Margena Wade LLC

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

**3.4.4 Independent Contractor.** For the purposes of this Section 4.8, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**3.4.4 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.

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

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

## **Article 33 Insurance and Indemnity**

### **33.1 Insurance**

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

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

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

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

(d) Professional Liability 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) Reserved. (Technology Errors and Omissions Coverage).

(f) Reserved. (Cyber and Privacy Insurance).

(g) Reserved. (Pollution Liability Insurance).

#### **3.4.4 Additional Insured Endorsements**

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

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

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

#### **3.4.4 Waiver of Subrogation Endorsements**

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

#### **3.4.4 Primary Insurance Endorsements**

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

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

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

#### **3.4.4 Other Insurance Requirements**

(a) 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.

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

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

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

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

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

**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 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.

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

**3.4.4 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.

### **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:

**3.4.4** 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.

**3.4.4** 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.

**3.4.4** 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.

**3.4.4** 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. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

## **Article 36 Termination and Default**

### **36.1 Termination for Convenience**

**3.4.4 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.

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

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

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

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

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

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

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

**3.4.4 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.

**3.4.4 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.

**3.4.4 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.

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

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

**3.4.4** 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.

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

**3.4.4** 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.

**3.4.4** 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**

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

3.4.1	Payment Limited to Satisfactory Services and Delivery of Goods
3.5	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

**3.4.4** 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.** 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 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**

**3.4.4 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.

**3.4.4 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 25% 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**

**3.4.4** 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.

**3.4.4** 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: Matthew Boyle  
Administrative Analyst  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
[Matthew.Boyle@sfmta.com](mailto:Matthew.Boyle@sfmta.com)

To Contractor: Gregory Parks  
Vice President, CFO  
K-I JV  
1450 Frazee Road, Suite 200  
San Diego, CA 92108  
[gparks@katzandassociates.com](mailto:gparks@katzandassociates.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.

**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**

**3.4.4 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.

**3.4.4 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 October 26, 2021. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, and any implementing Task Orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap,

ambiguity, or conflicting language between the City’s terms and Contractor’s printed terms attached, the City’s terms shall take precedence, followed by the procurement issued by the department, Contractor’s proposal, and Contractor’s printed terms, respectively.

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

## **Article 40 SFMTA Specific Terms**

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

**3.4.4** 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.

**3.4.4** 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**

**3.4.4 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.

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

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

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

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

**41.5 Management of City Data and Confidential Information**

**3.4.4 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.

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

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

## **Article 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: San Francisco Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney</p> <p>n:\ptc\as2022\1000424\01588065.docx final</p>	<p><b>CONTRACTOR</b></p> <p><b>K-I JV</b></p> <hr/> <p>Gregory Parks Vice President, CFO</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: 0000048735</p>
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**Appendices:**

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

## **Appendix A Scope of Services**

### **V. Policy Context**

Contractor shall use the SFMTA's Public Outreach and Engagement Team Strategy (POETS) as guidance in preparing strategies, engagements, and Deliverables that are consistent with the SFMTA's standards below. All Task Orders are in place to help ensure the Project Managers meet the needs of community stakeholders while supporting the SFMTA's key policies, including but not limited to:

- SFMTA FY 2018-2020 Strategic Plan: [https://www.sfmta.com/sites/default/files/reports-and-documents/2018/04/sfmta\\_strategic\\_plan.pdf](https://www.sfmta.com/sites/default/files/reports-and-documents/2018/04/sfmta_strategic_plan.pdf)
- Transit First Policy (SF Charter, Article VIIA, SEC. 8A.115): [http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- Public Outreach and Engagement Requirements, see Appendix H.
- SFMTA Brand Standards, see Appendix I.
- Complete Streets Policy (SF Public Works Code, Article II, SEC. 2.4.13): [http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1)
- Vision Zero Goal: <http://visionzerosf.org/>
- Better Streets Plan: <http://www.sfbetterstreets.org/>
- Bicycle Strategy: [https://www.sfmta.com/sites/default/files/BicycleStrategyFinal\\_0.pdf](https://www.sfmta.com/sites/default/files/BicycleStrategyFinal_0.pdf)
- Pedestrian Strategy: <http://archives.sfmta.com/cms/rpedmast/documents/1-29-13PedestrianStrategy.pdf>
- Walk First Program: <http://walkfirst.sfplanning.org/>

### **VI. Scope of Services**

#### **E. General Description of Services**

Contractor will generally support SFMTA project teams with planning, crafting, and delivering best practices, and culturally competent outreach and engagement with stakeholder communities and the public at-large. Depending on the needs of the SFMTA and project team, a Task Order may include a request for comprehensive services for a project – from strategy/planning to execution and evaluation – or be limited to specific services or phases of the project.

## **F. Specific Tasks**

Specific Services may include, but are not limited to, the following tasks:

### **1. Planning for Public Outreach and Engagement**

g. Create effective public participation plans that account for project requirements, funding needs and other related SFMTA projects. Contractor shall work with Project Managers to develop all necessary planning for the assigned project, as outlined by POETS. Plans must be consistent with the POETS and Public Outreach and Engagement Requirements and utilize industry best practices in culturally competent public participation, such as those developed by the International Association for Public Participation (IAP2).

h. Develop communications assessments that consider, but are not limited to, the following elements:

- i. Project objectives, goals, and requirements;
- ii. Key stakeholders and project impacts by stakeholder;
- iii. Communications and outreach priorities;
- iv. Effectiveness metrics and methods of evaluation; and
- v. Timelines for outreach in coordination with project planning, environmental clearance, design, construction and evaluation stages, as well as public hearings, SFMTA Board meetings, scoping hearings or other required Federal, State or local approvals.

i. Develop outreach and communication plans that support project goals and objectives for public participation plans.

- i. Create a comprehensive communications and outreach strategy that engages diverse stakeholders (including people left out of primary stakeholder groups, such as merchant and neighborhood associations), other affected parties, the public-at-large, inclusive of communities of concern;
- ii. Outline communications and outreach tactics through key project phases;
- iii. Identify opportunities for early outreach and engagement;
- iv. Develop a toolkit of customized approaches to engage stakeholders on the project including digital and online tools;
- v. Compile a customized stakeholder contact list;
- vi. Outline key messages; and
- vii. Identify coaching and training needs for project manager and staff, including media training, active listening, facilitation and mediation, negotiations and handling difficult people and situations.

2. Implementation of Public Outreach and Engagement
  - g. Assist with the implementation of outreach meetings, both in-person and online.
    - xvii. Schedule and reserve venues and provide logistical support for outreach meetings, inter- and intra-agency meetings, briefings, outreach at standing community events, celebratory events, tours and site visits, including transportation access, presentation set-up, sign-in, materials production and other duties as assigned;
    - xviii. Ensure broad awareness among relevant audiences of scheduling and content for stakeholder and outreach meetings;
    - xix. Develop presentations (e.g., PowerPoint) and presentation boards for meetings;
    - xx. Facilitate meetings, public engagement events and activities;
    - xxi. Record meeting minutes, transcribe audio visual recordings and draft meeting debriefs;
    - xxii. Track meeting attendance;
    - xxiii. Procure necessary tools and software for online outreach and engagement; and
    - xxiv. Promote engagement opportunities through traditional and digital advertising.
  - h. Collect and manage stakeholder engagement and feedback.
    - xix. Conduct and facilitate formal and informal focus groups;
    - xx. Design and administer surveys using different formats, including online, phone, intercept and in-person interviews;
    - xxi. Host design charrettes;
    - xxii. Solicit on-site, in-person feedback through various channels including phone banking, surveying or polling mechanisms;
    - xxiii. Conduct polling, balloting or other voting mechanisms for online or remote meetings;
    - xxiv. Set up and monitor hotlines, including working with 311 staff to triage project related calls; create new hotlines, as appropriate;
    - xxv. Aggregate feedback to allow for detailed reporting and trend analysis;
    - xxvi. Prepare detailed outreach history summaries in preparation for legislative action or completion of project community phase, including:
      - (9) Reports documenting all public engagement activities;
      - (10) Photographs from engagement events;
      - (11) Compilation of main engagement themes (as described above); and
      - (12) Counts and analysis of the number of individuals and stakeholder groups participating; and
    - xxvii. Identify and procure specific collection and measurement tools, as needed.

- i. Maintain stakeholder contacts and correspondence.
  - ix. Monitor, track and provide follow-up responses to constituent correspondence;
  - x. Manage stakeholder concerns about scheduling meetings, logistics and notification protocol;
  - xi. Update and maintain project stakeholder contact database, including constituents who are on- and offline; and
  - xii. Develop expanded stakeholder mailing lists for mailings and email blasts to reach a broad public audience.
- 3. Design and Development of Communications Materials
  - i. Collateral Materials
    - vii. Following the SFMTA’s Brand Standards, write and design culturally competent and accessible project collateral materials, such as fact sheets, mailers, reports, and presentation decks and templates using maps, infographics, diagrams, renderings, illustrations and photographs;
    - viii. Translate materials for limited-English proficient audiences on request; and
    - ix. Ensure collateral formats are compliant with ADA accessibility standards.
  - j. Digital Assets
    - xi. Assist in development and implementation of digital communications to support web pages, emails, blogs and social media;
    - xii. Draft project information for websites and for social media;
    - xiii. Ensure digital assets are compliant with ADA accessibility standards;
    - xiv. Provide social media monitoring services; and
    - xv. Procure digital advertising as directed.
  - k. Video Production
    - vii. Write, produce and edit videos that increase public understanding of project;
    - viii. Develop public dissemination plan for videos; and
    - ix. Translate videos for limited-English proficient audiences on request.
  - l. Miscellaneous Items
    - v. Develop customized give-away materials (i.e., “swag”) that support public interest and engagement; and
    - vi. Procure miscellaneous materials and supplies for meetings and presentations.

**IX. 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.

## **X. 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.

## **XI. Department Liaison**

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

**Appendix B  
Calculation of Charges**

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

<b>Firm</b>	<b>Name</b>	<b>Position / Classification</b>	<b>Education / Experience</b>	<b>Direct Hourly Labor Rate</b>	<b>Fully Burdened Hourly Labor Rate (Product of Direct Hourly Labor Rate x Multiplier)</b>
Katz & Associates(Prime)	Greg Parks	Principal-in-Charge /Assistant VP	B.A./20 years	\$67.31	\$197.88
Katz & Associates(Prime)	Nicolas Townes	Project Manager /Director	B.A./9 years	\$52.88	\$155.48
Katz & Associates(Prime)	Lewis Michaelson	Facilitator/ SeniorStrategist	B.A./ 40 years	\$71.52	\$210.28
Katz & Associates(Prime)	Emily Otis	Sr. CommunicationsMgr / Director	B.A./17 years	\$51.92	\$152.64
Katz & Associates(Prime)	Jim McHugh	Sr. Communications Mgr / Senior AccountExecutive	M.A./7 years	\$37.98	\$111.66
Katz & Associates(Prime)	Mahmoud Abunie	Communications Mgr /Account Executive II	M.A./7 years	\$32.21	\$94.70
Katz & Associates(Prime)	David Hopkins	Creative ServicesDirector / Director	M.A./25 years	\$49.04	\$144.17
Katz & Associates(Prime)	Matthew Bennett	Art Director / Director	B.A./20 years	\$43.27	\$127.21
Katz & Associates (Prime)	Camilo (JC) Eckstine-Gomez	Graphic Designer /Graphic Designer	M.A./10 years	\$31.00	\$91.14
InterEthnica (Prime)	Lisa Abboud	Principal engagementStrategist	BA, Liberal Studies, San Francisco State University/25 years	74.03	211.00
InterEthnica (Prime)	Lisa Abboud	Principal engagementStrategist	BA, Liberal Studies, San Francisco State University/25 years	74.03	211.00
InterEthnica (Prime)	Mona Abboud	Assistant ProjectManager	BA, Sociocultural Anthropology, San Diego, BA, PoliticalScience, UC San Diego/ 9 Years	57.89	165.00
InterEthnica (Prime)	Deborah Oh	Cultural Consultant	BA, International Relations, StanfordUniversity/ 11 years	52.98	151.00
InterEthnica (Prime)	Elena Castanon	Dir. of CommunityEngagement	BA, Business and ModernLanguages, Open University, UK/30years	50.87	145.00

<b>Firm</b>	<b>Name</b>	<b>Position / Classification</b>	<b>Education / Experience</b>	<b>Direct Hourly Labor Rate</b>	<b>Fully Burdened Hourly Labor Rate (Product of Direct Hourly Labor Rate x Multiplier)</b>
InterEthnica (Prime)	Ariana Silvav	Localization Mgr	BA, Fine Arts, Academy of Art University/5 years	43.85	125.00
InterEthnica (Prime)	Mandy Yu	Outreach Manager	Master's in Education, San Francisco State University/5 years	44.30	126.00
InterEthnica (Prime)	Monica Wong	Sr. Chinese Linguist	BA, Simon Fraser University, Finance, Burnaby B.C., Canada/10 years	67.01	\$191.00
InterEthnica (Prime)	Ayali Puerta	Sr. Spanish Linguist	Masters in Publishing and Editing, Universidad de Salamanca/ 18 years	67.01	\$191.00
Bonner Communications	Noelle Bonner	Principal & CEO	Bachelor of Arts, 11 years	\$115	258.75
Bonner Communications	Suzanne Souva	Senior Account Manager	Bachelor of Arts, 7 years	\$85	191.25
FivePaths	Eric Leland	Web Producer	BA/15 years	\$71.43	\$150
FivePaths	Jason Slater	Web Architect	Ph.D/15 years	\$71.43	\$150
FivePaths	Francisco Cortez	Web Designer	BA/12 years	\$71.43	\$150
FivePaths	Tyler Shuster	Web Engineer	BA/10 years	\$71.43	\$150
InkeDesign	Noel Inke	Lead Designer	BA/15 years	\$90.00	\$153.00
InkeDesign	Jens Peter Jungclaussen	UX and Design Strategy	Masters/10 years	\$105.00	\$178.50
JBR Partners, Inc.	James Bryant	Multicultural Outreach	30 years	\$87.30	\$220.00
JBR Partners, Inc.	Solomon So	Multicultural Outreach	10 years	\$50.48	\$127.20
JBR Partners, Inc.	Kenneth Washington	Multicultural Outreach	4 years	\$35.66	\$89.87

<b>Firm</b>	<b>Name</b>	<b>Position / Classification</b>	<b>Education / Experience</b>	<b>Direct Hourly Labor Rate</b>	<b>Fully Burdened Hourly Labor Rate (Product of Direct Hourly Labor Rate x Multiplier)</b>
JBR Partners, Inc.	Liz Valdellon	Multicultural Outreach	20 years	\$35.66	\$89.87
JBR Partners, Inc.	Ambassadors TBA(as-needed)	Multicultural Outreach	1 to 5 years	\$20.67	\$52.10
Margena Wade	Margena Wade	Public Outreach Lead	21 years	\$105	\$180.18
Margena Wade	Michelle Hutcherson	Public Outreach	13 years	\$62	\$106.39
SlowClap Productions	Daniel Lichtenberg	CEO/Creative Director	14yrs	\$57.44	\$135
SlowClap Productions	Cassandra Jabola	Senior Producer	13yrs	\$53.19	\$125

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

<b>Firm</b>	<b>Overhead (%)</b>	<b>Multiplier</b>
Katz & Associates	194%	2.94
InterEthnica	185%	2.85
Bonner Communications	125%	2.25
FivePaths	110%	2.1
InkeDesign	70%	1.7
JBR Partners	152%	2.52
Margena Wade	71.5%	1.715
SlowClap Productions	135%	2.35

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

<b>5.</b> Profit to be negotiated task by task (not to exceed 7%).
<b>6.</b> Prime Contractor markup on labor performed by Subcontractor shall not to exceed 3%.

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

<b>Other Costs</b>	
<b>Item</b>	<b>Cost</b>
Copies (Color)	\$1.00 per copy
Postage	At cost
Online Surveys	\$32.00/month
Eblasts	\$15.00/month
Mileage	IRS rate
Copies (Color)	\$1.00 per copy



<b>Requested by:</b>	Name, Title	<b>Date</b>	
<b>Reviewed by:</b>	Name, Contract Compliance Office	<b>Date</b>	
<b>Approved by:</b>	Division Director, Title	<b>Date</b>	

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