

**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**

**HNTB Corporation**

**Contract No. CS-194  
(CCO No. 26-1676)**

## Table of Contents

|                                                                                |    |
|--------------------------------------------------------------------------------|----|
| <b>Article 1: Definitions</b>                                                  | 1  |
| <b>Article 2: Term of the Agreement</b>                                        | 4  |
| 2.1 Term                                                                       | 4  |
| 2.2 Options to Extend                                                          | 4  |
| <b>Article 3: Financial Matters</b>                                            | 4  |
| 3.1 Certification of Funds; Budget and Fiscal Provisions                       | 4  |
| 3.1.1 Termination in the Event of Non-Appropriation                            | 4  |
| 3.1.2 Maximum Costs                                                            | 4  |
| 3.2 Authorization to Commence Work                                             | 5  |
| 3.3 Compensation                                                               | 5  |
| 3.3.1 Calculation of Task Order Compensation and Contract Not to Exceed Amount | 5  |
| 3.3.2 Payment Limited to Satisfactory Services                                 | 8  |
| 3.3.3 Withhold Payments                                                        | 8  |
| 3.3.4 Invoice Format                                                           | 8  |
| 3.3.5 Prompt Payment of Subcontractors                                         | 10 |
| 3.3.6 Getting Paid by the City for Services                                    | 10 |
| 3.3.7 Grant-Funded Contracts                                                   | 10 |
| 3.3.8 Payment Terms                                                            | 11 |
| 3.4 Audit and Inspection of Records                                            | 11 |
| 3.5 Submitting False Claims                                                    | 11 |
| 3.6 Payment of Prevailing Wages                                                | 11 |
| 3.6.1 Covered Services                                                         | 11 |
| 3.6.2 Wage Rates                                                               | 12 |
| 3.6.3 Subcontract Requirements                                                 | 12 |
| 3.6.4 Job Site Notices and Records                                             | 12 |
| 3.6.5 Payroll Records                                                          | 12 |
| 3.6.6 Certified Payrolls                                                       | 12 |
| 3.6.7 Compliance Monitoring                                                    | 13 |
| 3.6.8 Remedies                                                                 | 13 |
| 3.7 Apprentices                                                                | 13 |
| <b>Article 4: Services and Resources</b>                                       | 14 |
| 4.1 Services Contractor Agrees to Perform                                      | 14 |
| 4.2 Changes                                                                    | 14 |

|                                                                                  |           |
|----------------------------------------------------------------------------------|-----------|
| 4.3 Task Order Procedures.....                                                   | 14        |
| 4.3.1 Task Order Requirements .....                                              | 14        |
| 4.3.2 Task Order Request .....                                                   | 16        |
| 4.3.3 Contractor Request for Information.....                                    | 16        |
| 4.3.4 Contractor Task Order Proposal .....                                       | 16        |
| 4.3.5 Negotiation of Cost and Profit.....                                        | 17        |
| 4.3.6 Record of Negotiations .....                                               | 17        |
| 4.3.7 SBE Goals.....                                                             | 17        |
| 4.3.8 Notice to Proceed.....                                                     | 17        |
| 4.3.9 Changes to Task Order Pricing.....                                         | 17        |
| 4.3.10 Failure to Agree on Terms of Task Order .....                             | 17        |
| 4.4. Qualified Personnel.....                                                    | 18        |
| 4.4.1 Substitution of Key Personnel .....                                        | 18        |
| 4.5 Subcontracting .....                                                         | 18        |
| 4.6 Independent Contractor; Payment of Employment Taxes and Other Expenses ..... | 19        |
| 4.6.1 Independent Contractor .....                                               | 19        |
| 4.6.2 Payment of Employment Taxes and Other Expenses.....                        | 19        |
| 4.7 Assignment .....                                                             | 20        |
| 4.8 Service Warranties .....                                                     | 20        |
| 4.9 Liquidated Damages .....                                                     | 20        |
| 4.10 Reserved. (Performance Bond).....                                           | 20        |
| 4.11 Emergency - Priority 1 Service.....                                         | 20        |
| <b>Article 5: Insurance and Indemnity .....</b>                                  | <b>20</b> |
| 5.1 Insurance .....                                                              | 20        |
| 5.1.1 Required Coverages.....                                                    | 20        |
| 5.1.2 Additional Insured .....                                                   | 21        |
| 5.1.3 Waiver of Subrogation.....                                                 | 22        |
| 5.1.4 Primary Insurance.....                                                     | 22        |
| 5.1.5 Other Insurance Requirements .....                                         | 22        |
| 5.2 Indemnification .....                                                        | 23        |
| 5.3 Indemnification and Defense Obligations For Design Professionals .....       | 24        |
| 5.3.1 Defense Obligations.....                                                   | 24        |
| 5.3.2 Indemnity Obligations .....                                                | 24        |
| 5.3.3 Copyright Infringement .....                                               | 24        |

|                                                                                                           |    |
|-----------------------------------------------------------------------------------------------------------|----|
| 5.3.4 Severability Clause Specific to Indemnification and/or Defense Obligations .....                    | 24 |
| <b>Article 6: Liability of the Parties</b> .....                                                          | 24 |
| 6.1 Liability of City.....                                                                                | 24 |
| 6.2 Liability for Use of Equipment.....                                                                   | 25 |
| 6.3 Liability for Incidental and Consequential Damages.....                                               | 25 |
| <b>Article 7: Payment of Taxes</b> .....                                                                  | 25 |
| 7.1 Contractor to Pay All Taxes.....                                                                      | 25 |
| 7.2 Possessory Interest Taxes .....                                                                       | 25 |
| 7.3 Withholding .....                                                                                     | 25 |
| <b>Article 8: Termination and Default</b> .....                                                           | 25 |
| 8.1 Termination for Convenience .....                                                                     | 25 |
| 8.2 Termination for Default; Remedies .....                                                               | 27 |
| 8.3 Non-Waiver of Rights.....                                                                             | 29 |
| 8.4 Rights and Duties upon Termination or Expiration.....                                                 | 29 |
| <b>Article 9: Rights in Deliverables</b> .....                                                            | 30 |
| 9.1 Ownership of Results .....                                                                            | 30 |
| 9.2 Works for Hire .....                                                                                  | 30 |
| <b>Article 10: Additional Requirements Incorporated by Reference</b> .....                                | 30 |
| 10.1 Laws Incorporated by Reference .....                                                                 | 30 |
| 10.2 Governmental Conduct-Related Contractual Obligations .....                                           | 30 |
| 10.2.1 Conflict of Interest.....                                                                          | 30 |
| 10.2.2 Prohibition on Use of Public Funds for Political Activity .....                                    | 30 |
| 10.2.3 Limitations on Contributions.....                                                                  | 31 |
| 10.3 Employment-Related Contractual Obligations .....                                                     | 31 |
| 10.3.1 Small Business Enterprise (SBE) Program under Disadvantaged Business Enterprise (DBE) Program..... | 31 |
| 10.3.2 Minimum Compensation Ordinance.....                                                                | 32 |
| 10.3.3 Health Care Accountability Ordinance.....                                                          | 32 |
| 10.3.4 First Source Hiring Program.....                                                                   | 33 |
| 10.3.5 Reserved (Working with Minors).....                                                                | 33 |
| 10.3.6 Alcohol and Drug-Free Workplace .....                                                              | 33 |
| 10.3.7 Nondiscrimination in Contracts .....                                                               | 33 |
| 10.3.8 Nondiscrimination in the Provision of Employee Benefits .....                                      | 33 |
| 10.4 Environmental-Related Contractual Obligations .....                                                  | 33 |
| 10.4.1 Reserved. (Packaged Water Prohibition).....                                                        | 34 |

|                                                                               |    |
|-------------------------------------------------------------------------------|----|
| 10.4.2 Tropical Hardwood and Virgin Redwood Ban .....                         | 34 |
| 10.4.3 Food Service Waste Reduction Requirements .....                        | 34 |
| 10.4.4 Reserved. (Sugar-Sweetened Beverage Prohibition).....                  | 34 |
| 10.5 Slavery Era Disclosure.....                                              | 34 |
| 10.6 Reserved. (Nonprofit Contractor Obligations) .....                       | 34 |
| <b>Article 11: General Provisions</b> .....                                   | 34 |
| 11.1 Notices to the Parties .....                                             | 34 |
| 11.2 Compliance with Laws Requiring Access for People with Disabilities ..... | 34 |
| 11.3 Incorporation of Recitals.....                                           | 35 |
| 11.4 Sunshine Ordinance .....                                                 | 35 |
| 11.5 Modification of this Agreement.....                                      | 35 |
| 11.6 Dispute Resolution Procedure.....                                        | 35 |
| 11.6.1 Negotiation; Alternative Dispute Resolution.....                       | 35 |
| 11.6.2 Government Code Claim Requirement .....                                | 35 |
| 11.7 Agreement Made in California; Venue.....                                 | 36 |
| 11.8 Construction.....                                                        | 36 |
| 11.9 Entire Agreement.....                                                    | 36 |
| 11.10 Compliance with Laws .....                                              | 36 |
| 11.11 Severability .....                                                      | 36 |
| 11.12 Cooperative Drafting .....                                              | 36 |
| 11.13 Order of Precedence.....                                                | 36 |
| 11.14 Notification of Legal Requests .....                                    | 36 |
| 11.15 No Third-Party Beneficiaries.....                                       | 37 |
| <b>Article 12: SFMTA Specific Terms</b> .....                                 | 37 |
| 12.1 Large Vehicle Driver Safety Training Requirements .....                  | 37 |
| <b>Article 13: Data and Security</b> .....                                    | 37 |
| 13.1 Nondisclosure of Private, Proprietary or Confidential Information .....  | 37 |
| 13.1.1 Protection of Private Information .....                                | 37 |
| 13.1.2 City Data; Confidential Information.....                               | 37 |
| 13.2 Reserved. (Payment Card Industry (PCI) Requirements).....                | 38 |
| 13.3 Reserved. (Business Associate Agreement) .....                           | 38 |
| 13.4 Management of City Data and Confidential Information .....               | 38 |
| 13.4.1 Use of City Data .....                                                 | 38 |
| 13.4.2 Use of Generative Artificial Intelligence in Deliverables .....        | 38 |

|                                                                                     |    |
|-------------------------------------------------------------------------------------|----|
| 13.4.3 Disposition of City Data .....                                               | 38 |
| 13.5 Ownership of City Data .....                                                   | 39 |
| 13.6 Loss or Unauthorized Access to City’s Data; Security Breach Notification ..... | 39 |
| 13.7 Cybersecurity Risk Assessment .....                                            | 39 |
| <b>Article 14: Appendices</b> .....                                                 | 39 |
| 14.1 Appendices .....                                                               | 39 |
| <b>Article 15: MacBride and Signature</b> .....                                     | 40 |
| 15.1 MacBride Principles - Northern Ireland .....                                   | 40 |

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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  
HNTB Corporation  
Contract No. CS-194**

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

**Recitals**

**A.** The SFMTA wishes to retain Contractor for As-Needed Specialized Engineering Services for multiple federally funded projects.

**B.** Contractor was competitively selected as one of the highest-qualified scorers pursuant to a Request for Proposals (RFP) issued on February 19, 2026 under San Francisco Administrative Code Section 6.43.

**C.** Contractor committed to a participation goal of 25% for Small Business Enterprise(s) (“SBEs”) for this Agreement.

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

**E.** Approval for the Agreement was obtained on February 2, 2026 from the Civil Service Commission under PSC number DHRPSC0005828 which authorizes the award of multiple agreements, to cover the full amount of this contract and the individual duration of which cannot exceed five years.

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

**1.2      “Appendices”** means the appendices listed in Article 14 (“Appendices”) herein.

**1.3** “**Artificial Intelligence**” or “**Artificial Intelligence Model**” means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

**1.4** “**Artificial Intelligence System**” means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

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

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

**1.7** “**City Data**” means all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information and Deliverable Data.

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

**1.9** “**Confidential Information**” means confidential City information including, but not limited to, personal identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information. Confidential Information includes, without limitation, City Data.

**1.10** “**Contractor**” means HNTB Corporation, 505 Montgomery Street, Suite 620, San Francisco, CA 94111.

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

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

**1.13** “**Deliverable Data**” means any data that is required to be delivered to City as a Deliverable, or as a part of a Deliverable, under this Agreement.

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

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

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

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

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

**1.19 “Generative Artificial Intelligence”** means Artificial Intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the Artificial Intelligence’s training data.

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

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

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

**1.23 “Personal Identifiable Information (PII)”** means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household as further defined in the California Consumer Privacy Act.

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

**1.25 “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.

**1.26 “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, Deliverables, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

**1.27 “Small Business Enterprise” or “SBE”** means a for-profit, small business concern with a three-year average gross revenue that do not exceed the thresholds set forth in Appendix F, Section III.B and either: 1) is certified under any of the following programs: the

State of California's Small Business Program with the Department of General Services (State Program), the City and County of San Francisco's LBE Program (City Program), or 2) has received written confirmation from CCO that it meets the SFMTA's program eligibility requirements.

**1.28 "Task Order"** means a written directive from the SFMTA to the Contractor to perform specified work, issued under the procedures described in Section 4.3 below.

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

**2.1 Term.** The term of this Agreement shall commence on the Effective Date and expire on the date three years (1,095 calendar days) after the Effective Date, unless earlier terminated as otherwise provided herein.

**2.2 Options to Extend.** The SFMTA has the option to renew the Agreement for a period of two (2) additional years. The SFMTA only may extend this Agreement beyond the expiration date in accordance with Administrative Code Section 6.43 at the SFMTA's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **Article 3 Financial Matters**

### **3.1 Certification of Funds; Budget and Fiscal Provisions**

**3.1.1 Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to the 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. The City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

and the Parties having modified this Agreement as provided in Section 11.5 (Modification of this Agreement).

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

### **3.3 Compensation.**

**3.3.1 Calculation of Task Order Compensation and Contract Not to Exceed Amount.** The SFMTA will pay Contractor on a task-order basis for Services it performs under this Agreement. The total amount of the Task Orders awarded under this Agreement shall not exceed (“NTE”) Five Million Dollars (\$5,000,000). This amount is based on City’s estimated spend for the contract term. Should SFMTA’s actual spend exceed its estimated spend for the contract term, SFMTA may in its sole discretion increase the contract NTE for the contract term, subject to the limitations in San Francisco Administrative Code section 6.43. City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement. 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 subject to a total not to exceed amount (using the hourly labor rates set forth in Appendix B and Appendix C plus a fixed profit). The City may withhold a portion of payment as a reasonable retention, not to exceed 5%, until the conclusion of the Task Order. Contractor’s compensation for Task Orders shall be based on the following:

**(a) Direct Hourly Labor Rates.** The direct hourly labor rates in Appendix B are fixed negotiated rates and shall not change for the first 12 months after the Effective Date of this Agreement. Thereafter, during the term of this Agreement, Contractor may request annual escalation based on the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U). No direct hourly rate may be increased without prior written approval of the SFMTA. Contractor must request any escalation of these direct hourly labor rates no later than 30 Days before the anniversary of the Effective Date of this Agreement, and failure to timely do so may result in a denial of the request. Any requests for escalation of direct hourly labor rates must include evidence of the change in the CPI-U, evidence of payroll documentation, and an updated Appendix B for the SFMTA’s approval. The SFMTA will review all requests for escalation of direct hourly labor rates within 30 Days of receipt and notify Contractor of either an approval or denial. If approved, the new rates will become effective as of the date that a contract modification is executed, but no earlier than the anniversary of the Effective Date of this Agreement. In no event will the start of the new rates be backdated. Subsequent rate escalations will be effective no less than one year after the most recent prior rate escalation.

**(b) Overhead Rates.**

**(i)** The overhead rates in Appendix C shall be billed at that fixed level until 12 months after the Effective Date of this Agreement. Thereafter, during the term of this Agreement, the overhead rates in Appendix C may be adjusted annually with prior written approval from the SFMTA and will be effective as of the date that a contract modification is executed. The Contractor's and subcontractors' overhead rates are subject to audit in compliance with Federal requirements.

**(ii)** The overhead billing rates in Appendix C, including any adjustment to such rates as provided for above, are subject to readjustment to reflect actual rates 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 Contractor's and all subcontractors' actual rates during the term of this Agreement to the Project Manager. For each rate paid to the Contractor that exceeds the Contractor's or any subcontractor's actual rate, the Contractor shall reimburse to the City the total difference between the rate paid and Contractor's or subcontractor's actual rate during the term of this Agreement. Contractor shall reimburse City within 30 Days of written notice from City seeking reimbursement. For each actual overhead rate of Contractor or subcontractor that exceeds the rate paid to Contractor, City shall pay to Contractor the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Contractor within 60 Days of City's receipt of all of Contractor's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Contractor's rates as provided above.

**(c) Profit.**

**(i)** The Parties shall negotiate a profit as a lump sum amount for each Task Order, and it shall be no greater than 10% of the total cost of the Task Order. It is understood and agreed that the profit is a fixed amount that cannot be exceeded because of any differences between the estimated number of hours required to perform the Services in a Task Order and the actual number of hours required to perform the work. In no event shall payments to the Contractor exceed the total amount of the Task Order. The SFMTA may approve an increase in the profit only if such increase is required due to an increase in the Services or to additional work that increases the Services. The profit shall not be increased for Contractor's additional level of effort to complete the Services. It is further understood and agreed that the profit is only due and payable for Task Order work for which the SFMTA has given notice to proceed and for which the Contractor has satisfactorily completed.

**(ii)** The profit will be prorated and paid monthly in proportion to the Services satisfactorily completed. A payment for an individual month shall include that approved portion of the profit allocable to the Task Order work satisfactorily completed during said month and not previously paid. Any portion of the profit not previously paid in the monthly payments shall be included in the final payment. The method of proration may be adjusted by the

SFMTA to reflect deletions or amendments in the project work that are approved as herein described.

(iii) If the Services are reduced, that reduction shall be memorialized in an amendment to the Task Order, and the profit for that work shall be reduced, as negotiated by the Parties, but such reduction shall not be less than the proportional value of the reduced Services.

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

(e) **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, including travel 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, such costs must be documented in detail and pre-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.

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

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

- i. Contractor’s and subcontractors’ personnel relocation costs.

- ii. Purchases of office and field supplies or equipment, unless the supplies or equipment are: (1) not ordinary or typical supplies and equipment; and (2) uniquely required of this Project; and (3) serving only this Project. If all three requirements are met, the costs shall be separately identified in the Task Order. These supplies or equipment will then need to be turned over to the SFMTA at the end of the Contract.
- iii. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable unless otherwise approved by the SFMTA in advance as being necessary (e.g., no viable public transit options available).
- iv. Any travel expenses, including transportation, meals, and lodging costs, that are not approved by the SFMTA.
- v. Any overnight courier services extending outside of the Bay Area between Contractor offices except as approved by the SFMTA.
- vi. Any personal or entertainment expenses.
- vii. Computer usage.
- viii. Facsimile and telecommunications expenses.

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

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

**3.3.4 Invoice Format.** Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and the SFMTA, and include a unique invoice number and a specific invoice date. Payment shall be made by the City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. 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. For Task Orders based on a negotiated number of hours subject to a total not to exceed amount, Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in the Task Order. 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. Each Contractor invoice shall contain the following information, and invoices that do not include all required information or contain inaccurate information will not be processed for payment:

- (a) Contract Number
- (b) Task Order Number
- (c) Purchase Order Number for the Task Order
- (d) PeopleSoft Supplier Name and ID
- (e) Description of the work performed or services rendered
- (f) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced, including timesheets except where Contractor invoices for a Deliverable that is priced in the Task Order as a lump sum, or as estimated milestone payments described in the Task Order budget
- (g) Overhead costs
- (h) Other direct costs
- (i) A copy of the receipts for all expenses invoiced
- (j) Subcontractor costs supported by invoice itemization in the same format as described here
- (k) Profit for current invoice period and amount of profit as of date of invoice. Profit will be calculated as a prorated portion of the total profit for the task for which Contractor seeks payment.
- (l) Contract payment terms
- (m) Sales/use tax (if applicable)
- (n) Total costs
- (o) SFMTA Certificate of Progress Payment Form
- (p) SFMTA Application for Progress Payment Form
- (q) SFMTA Progress Payment Report (SFMTA SBE Form No. 6):  
The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the Progress Payment Report Form. If the Progress Payment Report Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA and Contractor of the omission. If Contractor's failure to provide the Progress Payment Report Form is not explained to the Controller's satisfaction, the Controller will withhold 20 percent of the payment due pursuant to that invoice until the Progress Payment Report Form is provided.

(r) Monthly Progress Report

**3.3.5 Prompt Payment of Subcontractors**

(a) **SBE Payment and Utilization Tracking System.** SBE participation goal applies to this Agreement. Contractor shall: (a) within three (3) business days of City's payment of any invoice to Contractor, pay SBE subcontractors; and (b) within five (5) business days of the City's payment of any invoice to Contractor, confirm its payment to subcontractors using the SFMTA's B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CCO. Failure to submit all required payment information into the B2GNow System may result in the suspension of future progress payments to Contractors.

(b) **Subcontractor Prompt Payment.** In accordance with the SBE Program under the SFMTA's DBE's Program no later than three working days from the date of Contractor's receipt of a progress payment by the City the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors, unless the prime Contractor notifies CCO in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subcontractor. If Contractor does not pay its subcontractors within seven calendar days after receipt of the progress payment, in accordance with San Francisco Administrative Code Section 6.42(f), Contractor shall pay to the subcontractor directly a penalty of 2% of the amount due per month for every month or portion thereof that payment is not made. This provision does not create a private right of action against the City.

**3.3.6 Getting Paid by the City for Services**

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

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

**3.3.7 Grant-Funded Contracts**

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

**(b) Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed due to Contractor's non-compliance with the Grant Terms, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

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

### **3.3.8 Payment Terms**

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

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

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

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

### **3.6 Payment of Prevailing Wages**

**3.6.1 Covered Services.** Services to be performed by Contractor under this Agreement will involve the performance of work covered by Articles 101 through 107 of the San Francisco Labor and Employment Code, as applicable, including without limitation the California Labor Code provisions incorporated therein (collectively, "Covered Services"), all of

which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

**3.6.2 Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Contractor agrees that it shall pay not less than the highest general Prevailing Rate of Wages, as determined by the Board of Supervisors and DIR, to all workers employed by Contractor who perform Covered Services under this Agreement. Copies of the Prevailing Rate of Wages as fixed and determined in accordance with Labor and Employment Code Section 103.2 are available from the City's Office of Labor Standards and Enforcement ("OLSE") and are on file at the Department's principal office or at the job site and shall be made available to any interested party on request.

**3.6.3 Subcontract Requirements.** Contractor shall insert in every subcontract for the performance of Covered Services under this Agreement a provision requiring subcontractor to pay all persons performing labor in connection with Covered Services under the subcontract not less than the highest general prevailing rate of wages as determined by the Board of Supervisors and DIR for such labor or services.

**3.6.4 Job Site Notices and Records.** Contractor shall prominently post at each job-site a sign informing employees that the work is subject to City's Prevailing Wage requirements and that these requirements are enforced by OLSE. Contractor shall also maintain a sign-in and sign-out sheet in a format prescribed by OLSE showing which employees are present on the job site.

**3.6.5 Payroll Records.** Contractor shall keep or cause to be kept, for a period of four years from the date of completion of the subject work, complete and accurate payroll records for all workers performing Covered Services, including without limitations time cards, trust fund reports, apprenticeship agreements, accounting ledgers, tax forms, proof of payment, and superintendent and foreperson daily logs for all trades workers performing work. Such records shall include the name, address and social security number of each worker who provided Covered Services, including apprentices, their classification, a general description of the Services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall perform any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by City and its authorized representatives.

**3.6.6 Certified Payrolls.** Contractor shall prepare certified payrolls for the period involved for all employees, including those of subcontractors, who performed Covered Services. Contractor and each subcontractor performing Covered Services shall electronically submit certified payrolls to the City and to the DIR as specified by the City and DIR. Contractor

and all subcontractors that will perform Covered Services must attend a training session on the preparation and electronic submission of certified payroll records provided by City. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

**3.6.7 Compliance Monitoring.** Covered Services performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements. Contractor agrees that (i) OLSE shall have the right to engage in random inspections of job sites and have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks, and (ii) OLSE may audit such records of Contractor and any subcontractors as it reasonably deems necessary. Failure to comply with these requirements may result in penalties and forfeitures pursuant to the California Labor Code, including Section 1776(h), as amended from time to time, and San Francisco Labor and Employment Code Article 101 through 107, as applicable.

**3.6.8 Remedies.** Should Contractor, or any subcontractor performing Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement or subcontract for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in San Francisco Labor and Employment Code and/or California Labor Code Section 1775. City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

### **3.7 Apprentices.**

**3.7.1** Contractor and its subcontractors of every tier that provide Covered Services under this Agreement (as defined in Section 1.1 above) shall, as a material term of the Agreement, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4 [commencing at Section 3070], and Section 1777.5 of the Labor Code) and Administrative Code Section 6.22(n). Contractor shall be solely responsible for securing compliance with Labor Code Section 1777.5 for all apprentice able occupations.

**3.7.2** Contractor shall include in all of its subcontracts the obligation for subcontractors to comply with the requirements of the State Apprenticeship Program.

**3.7.3** Should Contractor fail to comply with the apprenticeship requirements of Labor Code Section 1777.5, Contractor shall be subject to the penalties prescribed in Labor

Code Section 1777.7. The interpretation and enforcement of Labor Code Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.

**3.7.4** Contractor, if not signatory to a recognized apprenticeship training program under Labor Code, Chapter 4, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Contractor shall require its subcontractors who are not signatories to provide such evidence to the City as a condition precedent for qualifying for payment from the City.

**3.7.5** Contractor shall comply with all requests by the City to provide proof that Contractor and all of its subcontractors at every tier providing Covered Services are in compliance with the State Apprenticeship Program, including proof that Contractor and all of its subcontractors at any tier providing Covered Services contributed to the appropriate apprenticeship fund(s).

#### **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request and the City is not required to compensate for Services beyond those stated.

**4.2 Changes.** The SFMTA may at any time, by a written order, make changes within the general scope of this Agreement. Such change shall serve to modify this Agreement to the extent necessary to execute the change as directed. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Services under this Agreement, whether changed or not changed by the order, the SFMTA shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the Agreement accordingly. The Contractor must assert its right to an adjustment under this article within three business days from the date of receipt of the written order. Failure by Contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment. However, if the SFMTA decides that the facts justify it, the SFMTA may receive and act upon a proposal submitted at any time before final payment of the Agreement. If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, the SFMTA shall have the right to prescribe the manner of the disposition of such equipment or materials. Failure to agree to any adjustment shall be a dispute under Section 11.6, Dispute Resolution Procedure. However, nothing in this provision shall excuse the Contractor from proceeding with the Agreement as changed.

**4.3 Task Order Procedures.** Contractor shall perform the Services under Task Orders the SFMTA issues in accordance with the process described below.

**4.3.1 Task Order Requirements.** The SFMTA will define requirements for Task Orders.

**(a) Task Order Scope of Work.** The Task Order scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required SBE forms, and the Contractor Task Order proposal must be incorporated into the overhead rate (as approved in Appendix C). Separately from overhead, project management time required by a particular Task Order may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, and a task monitoring system (e.g., bi-weekly project reports or monthly status updates).

**(b) 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.

**(c) 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 a Task Order. 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 Order. In addition, the Contractor shall make good faith efforts to have all contracts signed with subcontractors within three weeks of NTP for the overall Contract. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

**(d) Transmittal of Work Product.** When requested by the SFMTA's Project Manager, and after completion of each task and subtask, the Contractor shall transmit to the SFMTA 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 shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to the SFMTA.

**(e) The SFMTA's Responsibilities Regarding Submittals.** The SFMTA will review and comment on Contractor's submittals generally within two calendar weeks of submittal. The SFMTA 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 SFMTA'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 SFMTA 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 SFMTA review comments or directives, either written or oral, to require work efforts not included in the Task Order, the Contractor shall within five business days of discovering the perceived extra work provide the SFMTA with either a written Contractor Request for Information under subsection

4.3.3 below, or a Contractor Proposal to perform additional work under the Task Order, which contains all of the information required by subsection 4.3.4 below for a Contractor Task Order Proposal.

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

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

**4.3.4 Contractor Task Order 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 direct 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, and labor to fill out required SBE forms. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one-half times the billing rate;

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

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

(iv) Proposed profit as follows: Profit will be negotiated on a task order basis and will not exceed 10% of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Contractor, Subcontractor(s) or combination thereof.

**4.3.5 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 a fixed profit to perform the work of each subtask and task and a total not-to-exceed price for the Task Order.

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

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

- The individual SBE goal set for each Task Order.
- The overall SBE participation goal established for the entire Agreement (which includes the commitments the Contractor made to each of its listed SBE subcontractors at time of proposal). See Section 10.6 (Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program) for more information on the SBE Program.

**4.3.8 Notice to Proceed.** The SFMTA will issue and send to Contractor a Task Order Form (refer to Appendix D), 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. Contractor shall use this Task Order number when submitting invoices to the SFMTA's Project Manager for payment under the Task Order.

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

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

**4.4 Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services for which it is contracted to provide through this Agreement, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. All personnel, including those assigned at the City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule of a Task Order. The SFMTA reserves the right to require the Contractor to reassign any individual on the Contractor's project team if the SFMTA is unsatisfied with that person's performance or that person fails to demonstrate the required qualifications or expertise. The SFMTA reserves the right to review and approve any replacement of team members, and the right to reject invoices submitted related to work performed by replacement team members that the SFMTA did not approve. Contractor shall advise SFMTA immediately any time one of the individuals designated as Key Personnel in Appendix B deviates from their committed role or time on a Task Order (e.g., is assigned to another project). The SFMTA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

**4.4.1 Substitution of Key Personnel.** Substitutions of Key Personnel will not be allowed except for extenuating circumstance, such as death, illness or departure from the firm, or with the City's prior approval, which approval will not be withheld as long as such substitution will not delay or otherwise harm the Project(s), which shall be determined by the SFMTA in its sole discretion. If it is necessary to substitute Key Personnel, the Contractor shall propose a replacement in writing to the SFMTA for approval.

The Contractor shall replace any Key Personnel departing from the Project(s) or departing from his/her assigned role in the Project(s) with an individual of comparable or greater experience on a non-temporary basis within 30 calendar days of the departure of the Key Personnel, unless the SFMTA grants an extension to that time limit in writing. Contractor's failure to replace Key Personnel shall be cause for the City to suspend invoice payments.

Contractor shall not be relieved of its obligation for full performance of the Scope of Services as a result of any unfilled position. The Contractor shall be held fully responsible for any inefficiencies, schedule delays or cost overruns resulting in whole or in part from any Key Personnel departing from the Project or departing from his/her assigned role in the Project before the end of the committed duration.

Contractor shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training and learning on the job.

#### **4.5 Subcontracting**

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

**4.5.2** The SFMTA's execution of this Agreement constitutes its approval of the subcontractors listed in Appendix G.

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

**4.6.1 Independent Contractor.** For the purposes of this Section 4.6, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, including its agents and employees, will not represent or hold itself/themselves out to be employees of the City at any time. Contractor shall not have employee status with the City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that the City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to the City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with Section 4.6. Should the City determine that Contractor is not performing in accordance with the requirements of Section 4.6, the 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 the City believes that an action of Contractor warrants immediate remedial action by Contractor, the City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.6.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with the 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 4.6 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 the City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless the 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 4.6.

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

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

**4.9 Liquidated Damages.** Liquidated damages may be included in individual Task Orders.

**4.10 Reserved. (Performance Bond)**

**4.11 Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance**

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

(a) Commercial General Liability Insurance with limits not less than \$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 Liability Insurance, 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) If required by the City's Risk Manager for a particular task or tasks, Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Contract and shall also provide coverage for the following risks:

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

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

(f) If required by the City's Risk Manager for a particular task or tasks, Cyber and Privacy Liability Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(g) Reserved. (Pollution Liability Insurance)

### **5.1.2 Additional Insured.**

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

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

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

**5.1.3 Waiver of Subrogation.** The Workers' Compensation Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

#### **5.1.4 Primary Insurance**

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

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

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

#### **5.1.5 Other Insurance Requirements**

(a) Thirty Days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than 10 Days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties).

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

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or

legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

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

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

## **5.2 Indemnification.**

**5.2.1** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, Contractors and experts, and related costs, and City's costs of investigating any claims against the City.

**5.2.2** In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification

provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

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

**5.2.4** Under no circumstances will City indemnify, defend, or hold harmless Contractor.

### **5.3 Indemnification and Defense Obligations For Design Professionals.**

**5.3.1 Defense Obligations.** To the fullest extent permitted by law, Contractor shall, following a tender of defense from City, assume the immediate defense of (with legal counsel subject to approval of the City), the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, losses, costs, damages, expenses and liabilities of every kind, nature, and description including, without limitation, injury to or death of any person(s) and incidental and consequential damages (collectively "Damages"), court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation (collectively "Litigation Expenses"), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"). City will reimburse Contractor for the proportionate percentage of defense costs exceeding Contractor's proportionate percentage of fault as determined by a Court of competent jurisdiction.

**5.3.2 Indemnity Obligations.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Indemnitees from and against any and all Liabilities, including but not limited to those for Damages or Litigation Expenses specified in Section 5.2.1.

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

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

**5.3.5** Under no circumstances will City indemnify, defend, or hold harmless Contractor.

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

**6.1 Liability of City.** CITY'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "CALCULATION OF TASK ORDER COMPENSATION AND CONTRACT NOT TO EXCEED AMOUNT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible in accordance with applicable law 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 the City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by 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. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

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

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

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

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

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

(a) Completing performance of any Services that the SFMTA requires Contractor to complete prior to the Termination Date

(b) Halting the performance of all Services on and after the Termination Date.

(c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

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

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

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

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

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

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

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

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

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

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

**8.1.6 Payment Obligation.** City's payment obligation under this Section 8.1, Termination for Convenience, shall survive termination of this Agreement.

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

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

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

|            |                                 |
|------------|---------------------------------|
| 3.5        | Submitting False Claims         |
| 4.7        | 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 the Services or to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten (10) days after written notice thereof from the SFMTA to Contractor or from when Contractor otherwise becomes aware of the Event of Default, provided that where a default cannot be fully cured within ten days, the Contractor will be afforded a reasonable period to cure the default so long as the initial cure is underway and diligently thereafter implemented within the initial ten day period. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, in addition to all other remedies available to the SFMTA, 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, reorganization or arrangement, any other petition in bankruptcy or for liquidation, or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

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

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

**8.2.4** Any notice of default must be sent in accordance with Article 11.

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

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

**8.4.1** Section 8.4, Rights and Duties Upon Termination or Expiration, and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

|           |                                                                |
|-----------|----------------------------------------------------------------|
| 3.3.2     | Payment Limited to Satisfactory Services and Delivery of Goods |
| 3.3.7(b)  | Grant Funded Contracts - Disallowance                          |
| 3.5       | Submitting False Claims                                        |
| Article 5 | Insurance and Indemnity                                        |
| 6.1       | Liability of City                                              |
| 6.3       | Liability for Incidental and Consequential Damages             |
| Article 7 | Payment of Taxes                                               |
| 8.1.6     | Payment Obligation                                             |
| 8.2.2     | Default Remedies                                               |

|            |                                     |
|------------|-------------------------------------|
| 9.1        | Ownership of Results                |
| 9.2        | Works for Hire                      |
| 11.6       | Dispute Resolution Procedure        |
| 11.7       | Agreement Made in California; Venue |
| 11.8       | Construction                        |
| 11.9       | Entire Agreement                    |
| 11.10      | Compliance with Laws                |
| 11.11      | Severability                        |
| Article 13 | Data and Security                   |

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

## **Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, any partially-completed Deliverables and related materials shall become the property of and will be transmitted to the City. Unless expressly authorized in writing by the SFMTA, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of the City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon its subcontractors. With City's prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of the Agreement.

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

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by

reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca](http://www.amlegal.com/codes/client/san-francisco_ca).

## **10.2 Governmental Conduct-Related Contractual Obligations.**

**10.2.1 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 SFMTA if it becomes aware of any such fact during the term of this Agreement.

**10.2.2 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.

**10.2.3 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 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 (i) 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; (ii) a candidate for that City elective office; or (iii) 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 (12) months after the date 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 ten percent (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.

## **10.3 Employment-Related Contractual Obligations.**

### **10.3.1 Small Business Enterprise (SBE) Program under Disadvantaged Business Enterprise (DBE) Program**

(a) **General.** The SFMTA is committed to a Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise Program (DBE Program) for the participation of SBEs in federally funded contracting opportunities. In addition, the Contractor must comply with all applicable federal regulations regarding SBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement.

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

(c) **Termination of SBEs.** The prime contractor may not terminate the work designated to be performed by an SBE in the memo required by Section 4.3.7, SBE Goal (or an approved substitute SBE), or any portion of that work, without prior written consent by the SFMTA CCO. A termination includes any reduction or underrun in work listed for a SBE not caused by a material change to the prime contract by the SFMTA. This requirement applies to instances that include, but are not limited to, when a prime contractor seeks to perform work originally designated for a SBE subcontractor with its own forces or those of an affiliate, a non-SBE, or with another SBE firm.

(i) The Contractor must utilize the designated SBEs to perform the work and supply the materials described in the Section 4.3.7 memo, unless the contractor obtains the SFMTA written consent under this section; and

(ii) Unless the SFMTA consent is provided under this section, the Contractor is not entitled to any payment for work or material unless it is performed or supplied by the designated SBE.

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

**10.3.2 Minimum Compensation Ordinance.** Labor and Employment Code Article 111 applies to this contract. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions

of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

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

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

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

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

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

**10.3.7 Nondiscrimination in Contracts.** Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall

incorporate by reference in all subcontracts the provisions of Articles 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

**10.3.8 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

#### **10.4 Environmental-Related Contractual Obligations.**

##### **10.4.1 Reserved. (Packaged Water Prohibition)**

**10.4.2 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.

**10.4.3 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.

##### **10.4.4 Reserved. (Sugar-Sweetened Beverage Prohibition)**

**10.5 Slavery Era Disclosure.** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

#### **10.6 Reserved. (Nonprofit Contractor Obligations)**

### **Article 11 General Provisions**

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

To City: San Francisco Municipal Transportation Agency  
Streets Division  
One South Van Ness Avenue, 3<sup>rd</sup> Floor

San Francisco, CA 94103  
Attn: Christian Kalinowski  
[Christian.Kalinowski@sfmta.com](mailto:Christian.Kalinowski@sfmta.com)

To Contractor: HNTB Corporation  
505 Montgomery Street, Suite 620  
San Francisco, CA 94111  
Attn: Kieran Kelly-Sneed  
[kkellysneed@HNTB.com](mailto:kkellysneed@HNTB.com)

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

## **11.2 Compliance with Laws Requiring Access for People with Disabilities.**

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

**11.2.2** Contractor shall provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the information content and technology ("ICT") and/or Services provided under this Agreement.

### **11.2.3 Reserved (Web and Mobile Content Accessibility).**

**11.3 Incorporation of Recitals.** The matters recited in the Recitals section of this Agreement are a substantive portion of this Agreement and are hereby incorporated into and made part of this Agreement.

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all City records related to its formation, Contractor's performance of Services, and City's payment may be subject to the California Public Records Act, (California Government Code §7920.000 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 by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor must submit the SFMTA SBE Form 8 Declaration - Modification of Professional Services Contract and obtain prior CCO approval for any amendment, modification, supplement or change order.

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. City may elect, in its sole discretion, to participate in informal dispute resolution proceedings. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under Section 11.6.

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

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California without regard to conflict of law provisions. 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 Agreement including the Appendices, sets forth the entire agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

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

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) 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.** If the Appendices to this Agreement include any Contractor terms, Contractor agrees that in the event of any discrepancy, inconsistency, gap, ambiguity, or conflict in language between City's terms and Contractor's terms, City's terms shall take precedence. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

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

**11.15 No Third-Party Beneficiaries.** The representations, warranties and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

## **Article 12 SFMTA Specific Terms**

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

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

vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

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

## **Article 13 Data and Security**

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

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

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

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

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

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

**13.4.1 Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, 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 City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this

project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use, provided, however, that no City Data may be used by Contractor to train, modify or improve any Artificial Intelligence Systems or Models without City's prior written consent, which may be withheld or withdrawn at City's sole discretion. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

**13.4.2 Use of Generative Artificial Intelligence in Deliverables.** Contractor is prohibited from using Generative Artificial Intelligence in the development of Deliverables without City's prior written consent. Contractor represents and warrants to City that Deliverables will not be developed in a manner that conflicts with the City's rights in and to the Deliverables under Article 9, "Rights in Deliverables," or the City Data confidentiality and security requirements under Article 13, "Data and Security," of this Agreement.

**13.4.3 Disposition of City Data.** Except as otherwise provided for in this Agreement, upon the City's request, termination or expiration of this Agreement, or the expiration of any required document retention period or litigation hold, Contractor shall promptly, but in no event later than 30 Days, return all City Data given to or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall within 10 business days, securely dispose, clear, purge, and/or physically destroy, all copies of all City Data from its servers, files, hosted environments used in performance of this Agreement (including subcontractors' environments), work stations used to process or produce the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such secure disposal occurred within five business days of the disposal. 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 most current industry standard.

**13.5 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City. Notwithstanding any other provision of this agreement, Contractor shall retain ownership of all pre-existing intellectual property used in this agreement.

### **13.6 Loss or Unauthorized Access to City's Data; Security Breach Notification.**

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

**13.7 Cybersecurity Risk Assessment.** If a Cybersecurity Risk Assessment ("CRA") was required before entering the Agreement, Contractor must complete an annual CRA to demonstrate that it has maintained the data privacy and information security program required for City contractors. If Contractor does not satisfactorily complete an annual CRA, the City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement or exercise any of its other remedies hereunder. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

## **Article 14 Appendices**

**14.1 Appendices.** The following appendices ("Appendices" in the plural and each an "Appendix" in the singular) are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- A: Scope of Services
- B: Direct Hourly Labor Rates
- C: Overhead Rates
- D: Task Order Request Form
- E: FTA Requirements
- F: Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program for Professional and Technical Services Requirements for Architects, Engineers, Planners, Environmental Scientists and Other Professional Services Contracts
- G: Directory of Subcontractors

## **Article 15 MacBride and Signature**

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

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

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

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CITY</b><br><br><b>San Francisco</b><br><b>Municipal Transportation Agency</b><br><br><br><hr/> <b>Julie Kirschbaum</b><br>Director of Transportation<br><br>Authorized By:<br><br>Municipal Transportation Agency Board of<br>Directors<br><br>Resolution No: _____<br><br>Adopted: _____<br><br>Attest: _____<br>Secretary, to the Board<br><br>Approved as to Form:<br><br>David Chiu<br>City Attorney<br><br><br>By: _____<br>David F. Innis<br>Deputy City Attorney | <b>CONTRACTOR</b><br><br><b>HNTB Corporation</b><br><br><br><hr/> <b>Jeff Watson</b><br><b>West Division President</b><br><br><br><u>Acknowledgement of Large Vehicle Driver<br/>Safety Training Requirements:</u><br><br>By signing this Agreement, Contractor<br>acknowledges that it has read and understands<br>Section 12.1: Large Vehicle Driver Safety<br>Training Requirements.<br><br><br><br>City Supplier Number: <b>0000019138</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## **Appendix A Scope of Services**

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

Contractor agrees to provide a broad range of specialized engineering services and staff to complete task orders issued by the SFMTA, either by direct assignment of its own personnel or through Subconsultants, including, but not limited to, initial planning and programming, specialized studies, design support, construction support, construction management, special inspection and material testing, start-up and commissioning, and project closeout. Staffing expectations will be provided on a task order basis but may be up to full-time to provide support for the SFMTA's project delivery division, which manages facilities, transit optimization, fixed trackway, and major corridors projects. The scope of work is categorized below. Note that the work may not be specific to its category and is not limited to the following:

#### **A. Planning**

1. Preparing and reviewing alternative analyses and developing overall design approaches.
2. Performing field surveys using licensed surveyors, including but not limited to topographic/control mapping, track/rail survey (inside and outside of tunnels), monument referencing, utility surveys, LiDAR, and ground penetrating radar (GPR).
3. Identifying and coordinating with utility providers to obtain existing utility information, assessing potential conflicts, facilitating relocations or design adjustments, and coordinating with utility owners to resolve utility conflicts with proposed improvements by relocating conflicting utilities.
4. Performing underground utility locating and potholing to identify as-built utilities, producing utility composite drawings, redesigning conflicts, acquiring additional real estate, and/or work-around.
5. Developing project management plans in accordance with FTA requirements.
6. Providing various FTA reports, as requested, including risk registers and financial updates.
7. Providing quality assurance oversight, audits, plans, training, and assistance per FTA requirements.

#### **B. Design**

1. Providing engineering design documents (drawings, specifications, calculations) as the Designer of Record for transit optimization, facilities, fixed guideway, and major corridor projects, including but not limited to the following disciplines:
  - a. Architectural & Civil – architecture, landscape architecture, civil, structural, geotechnical, tunnel;
  - b. Mechanical, Electrical & Plumbing (MEP) – mechanical, electrical, plumbing, fire protection, photometrics;

- c. Rail Systems & Transit Infrastructure – track, special track, signal, overhead contact system, electrification and power simulation studies.
2. Preparing or reviewing design and construction schedules, construction sequencing plans, and cost estimates (including bid items and descriptions), and performing schedule and phasing analyses to recommend project timelines and phasing strategies.
3. Performing or reviewing site investigations and functional analyses.
4. Performing geotechnical investigations and reports, including soil borings, sampling, coring, geophysical survey, laboratory testing, and recommendations on shallow and deep foundation design, seismic design criteria, total and differential settlement estimates, liquefaction evaluation, earthwork and site grading recommendations, and flexible and rigid pavement design criteria.
5. Identifying construction issues and constraints. Preparing and reviewing design packages (plans and specifications), including integration of all technical and contractual sections into one set of plans and specifications.
6. Conducting peer review to evaluate and address critical safety, technical, constructability, and operational issues, including assumptions, conclusions, and recommendations that are made by SFMTA staff or other consultants. Preparing peer review reports that summarize findings, conclusions, and recommendations.
7. Providing technical administrative support (e.g., file drawings, meeting minutes, and document control) using the SFMTA's existing document control system.
8. Incorporating the SFMTA's Quality Assurance/Quality Control (QA/QC) program into the design and construction packages.
9. Identifying special testing requirements, preparation testing, and start-up plans.
10. Providing engineering drafting support using AutoCAD Civil 3D, such as design and as-built drawings for various projects.
11. Performing preliminary and system hazard analyses, failure modes and effects analyses, single-point-of-failure analyses, hazard level classification, and safety certification of systems.
12. Providing systems engineering, including central control and communications system analysis, strategic analysis of the SFMTA's human and automated systems, systems integration, safety processes, configuration management, and related work.
13. Updating and standardizing project specifications to align with CSI Master Format standards to ensure consistency across all city departments.

### C. Contracting

1. Assist in preparing procurement contracts for track, mechanical and electrical components, operating equipment, and long-lead items. The task may include performing product research, specifying products, and performing alternative analyses.
2. Conducting bid analyses by reviewing and evaluating project bids and/or proposals for completeness, compliance with project specifications, and cost reasonableness. This process will result in recommendations for contract award.

#### D. Construction

1. Providing design support during construction as supplementary staff to the Designer of Record or as the Designer of Record.
2. Providing engineering support during construction, including submittal and RFI review and response; preparing, reviewing, and negotiating change orders and proposed change orders; analyzing cost proposals and preparing cost estimates; evaluating schedules, recovery schedules, and fragnets; and providing other technical support.
3. Providing construction field engineering support (documentation and resolution of engineering issues including field investigations and evaluation of field conditions).
4. Providing construction management staff, such as a Resident Engineer (RE) and Assistant Resident Engineer (ARE) to oversee construction activities, ensure contract compliance, and manage day-to-day field operations. Staff will assist with documentation, inspections, and coordination among project stakeholders.
5. Providing day and night construction inspection support, including weekends.
6. Providing construction management support (e.g. claims analysis and negotiation plans, risk analysis, time impact analysis, and dispute review meeting documentation, such as position papers and backup documentation). Consultant is not expected to directly participate in claims negotiations for projects in construction that are primarily managed by the SFMTA.
7. Performing cost and schedule analyses of contracts, change orders, task orders, and contract modifications per FTA requirements; change order estimating and negotiation; schedule and delay analysis; constructability review; forensic cost and accounting analyses; and dispute analysis and review.
8. Performing special inspections as required by the City, including welding inspection with non-destructive testing (NDT), such as ultrasonic, magnetic particle, dye penetration, radiographic, and hardness testing, structural steel and high strength bolt (HSB) inspection, concrete inspection, grout inspection, soil testing, and fireproofing review. Testing work shall be conducted by certified inspectors and/or labs.
9. Performing laboratory material testing as required by the City, including soil, aggregate, steel, HSB, concrete cylinder and beams, grout cubes, hot mix asphalt, and fireproofing testing.
10. Providing Stormwater Pollution Prevention Plan (SWPPP) oversight, including regular inspections, reporting, and coordination with the contractor. This oversight work shall be conducted by a Qualified SWPPP Practitioner (QSP)/Qualified SWPPP Developer (QSD) certified staff. Frequency of inspection/reporting will be provided on a task order basis.
11. Performing system start-up and commissioning, including integration and pre-revenue “dry-run” testing, developing testing procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses. Performing this work may require coordination with SFMTA Operations and Maintenance teams.

12. Coordinating with contractors to select Dispute Review Board and administering resolution processes.
13. Providing construction safety consulting services, including:
  - a. Reviewing contractor's safety record, providing recommendations on the quality of the Contractor's safety documents, and recommending scores of Occupational Safety and Health Administration (OSHA) serious, repeat, and willful violation citations.
  - b. Evaluating contractor-submitted site-specific Health and Safety Plans (HASP) and Job Hazard Analysis (JHA) forms for SFMTA projects.
  - c. Performing general safety services, such as conducting site monitoring field visits, preparing inspection reports, and documenting inspection findings.

E. Track/Rail

1. Predicting, analyzing, preventing, and mitigating noise and vibration from transit operations and equipment, and designing and monitoring mitigation measures.
2. Performing annual ultrasonic rail testing per SFMTA's Standard Operating Procedure (SOP) entitled "Track Inspection and Maintenance" (see Appendix H) to identify internal rail defects.
3. Performing tunnel inspections per SFMTA's SOP entitled "Tunnel Structural Inspection Procedures" (see Appendix I), including reporting findings and recommending tunnel repairs and issue mitigation strategies.
4. Providing safety certification oversight and required documentation to obtain System Safety and Security Program per CPUC General Order (GO) 164-D, which requires transit agencies who are building and operating rail fixed guideway systems to establish a System Safety and Security Program. The scope of work may include the following:
  - a. Researching and drafting safety standards.
  - b. Reviewing the contractor's system safety programs and hazard analysis.
  - c. Developing Safety and Security Certification Plans.
  - d. Leading or participating in the Safety and Security Certification Review Committee (SSCRC).
  - e. Maintaining the Audit Conformance Checklists.
  - f. Reviewing the contractor's safety requirements.
  - g. Auditing implementation of safety requirements and hazard resolution.

F. Environmental

1. Assisting in the preparation of California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) documentation, including technical studies, environmental assessments, and public outreach.
2. Conducting environmental sampling and material testing, such as asbestos or lead paint, and preparing testing reports.
3. Conducting environmental borings for subsurface soil and groundwater samples, including permitting, drilling, sample collection, logging, and borehole closure.
4. Assisting in preparing and submitting Maher Ordinance documentation and related testing.

5. Preparing Phase 1 and, if necessary, Phase 2 Environmental Site Assessments (ESAs), including site inspections, historical research, sampling, laboratory analysis, and reports that document the findings and recommendations.

#### **G. Project Management**

1. Providing qualified project managers to serve as assistant project managers. The scope of work may include the following:
  - a. Monitoring and reviewing project scope to ensure project alignment with the original scope.
  - b. Preparing task order schedules with deliverable milestones.
  - c. Overseeing design and construction activities and coordinating multi-disciplinary technical staff across organization boundaries.
  - d. Reviewing change orders with SFMTA teams and developing implementation recommendations.
  - e. Monitoring and inspecting contractor work to ensure compliance with contract plans, specifications, and schedules. If the work is found not to comply, the consultant shall notify the SFMTA and assist in resolving issues with the contractors.
  - f. Preparing and monitoring the project budget and schedule and assist with obtaining funding, as necessary.
  - g. Preparing monthly project reports and schedule updates.
  - h. Assisting with or preparing agency project reports, management presentations on project status, and presentations to various outside agencies related to project status.
2. Providing advice to the SFMTA on alternative delivery projects as an Owner-Advisor or Owner Representative. Work may include:
  - a. Validating project scope, budget, and schedule through independent analysis and stakeholder coordination to ensure alignment with SFMTA's project goals and performance requirements.
  - b. Providing ongoing oversight of design and construction activities, including cost and schedule monitoring, change management, and construction observation to ensure projects remain on track and meet quality standards.
  - c. Supporting final inspections, system commissioning, staff training, and document turnover to ensure smooth transition to operations and project readiness for use.

## **2. 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.

## **3. Department Liaison**

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be Christian Kalinowski.

**4. Services Provided by Attorneys**

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

**Appendix B**  
**Direct Hourly Labor Rates by Position or Class for Contractor and all Subcontractors**

| <b>Firm</b>      | <b>Employee Name<sup>3</sup></b> | <b>Position / Classification</b>    | <b>Direct Hourly Rate</b> |
|------------------|----------------------------------|-------------------------------------|---------------------------|
| HNTB Corporation | Pierre Abi-hanna                 | Civil Engineer                      | \$89.28                   |
| HNTB Corporation | Justine Belizaire                | FTA Program Specialist              | \$183.92                  |
| HNTB Corporation | Lydia Boumann                    | Document Controls Specialist        | \$61.20                   |
| HNTB Corporation | Michael Brown                    | Planning Lead                       | \$81.36                   |
| HNTB Corporation | Raymond Chow                     | Quality Assurance Manager           | \$94.72                   |
| HNTB Corporation | Mark Clendennen                  | Rail Systems Lead                   | \$145.76                  |
| HNTB Corporation | Craig Constant                   | Program Manager                     | \$150.00                  |
| HNTB Corporation | Roderick de Leon                 | CAD Manager                         | \$77.52                   |
| HNTB Corporation | Devang Desai                     | CM and Contracting Lead             | \$146.00                  |
| HNTB Corporation | Matthew Dixon                    | Rail Systems Engineer               | \$137.68                  |
| HNTB Corporation | Jelena Durovic (KP)              | Lead Cost Estimator                 | \$118.32                  |
| HNTB Corporation | Joel Elder                       | Safety & Security Manager           | \$122.64                  |
| HNTB Corporation | Brian Elrod                      | Senior Landscape Architect          | \$116.40                  |
| HNTB Corporation | Brett Faust                      | Rail Transit Engineer               | \$86.08                   |
| HNTB Corporation | Chester Fung                     | Senior Planner                      | \$112.00                  |
| HNTB Corporation | Shannon Gaffney                  | Principal in Charge                 | \$217.36                  |
| HNTB Corporation | Kyle Hagan                       | Tunnel Inspection Lead <sup>2</sup> | \$78.16                   |
| HNTB Corporation | Jesse Harder                     | Senior Mechanical Engineer          | \$123.68                  |
| HNTB Corporation | Antoine Hatem                    | Resident Engineer                   | \$160.16                  |
| HNTB Corporation | Sarah Hersom (KP)                | Design Manager                      | \$181.60                  |
| HNTB Corporation | Reza Hessabi (KP)                | Mechanical Engineering Lead         | \$161.20                  |
| HNTB Corporation | Todd Hoekstra                    | Construction Manager                | \$122.08                  |
| HNTB Corporation | Nikki Jeffery                    | Track and Rail Lead                 | \$122.00                  |
| HNTB Corporation | Janet Kan                        | Civil and Geotechnical Engineer     | \$123.20                  |

| <b>Firm</b>                | <b>Employee Name<sup>3</sup></b> | <b>Position / Classification</b>        | <b>Direct Hourly Rate</b> |
|----------------------------|----------------------------------|-----------------------------------------|---------------------------|
| HNTB Corporation           | Kieran Kelly-Sneed (KP)          | Project Manager                         | \$114.40                  |
| HNTB Corporation           | Andrew Kreck                     | Senior Contracting Manager              | \$209.12                  |
| HNTB Corporation           | David Loftus                     | Engineering Project Manager             | \$138.56                  |
| HNTB Corporation           | Kathryn Magee (KP)               | Civil Design and PM Discipline Lead     | \$115.04                  |
| HNTB Corporation           | Rosanna McGuire                  | Environmental Planning Lead             | \$78.80                   |
| HNTB Corporation           | Ryan Mun                         | Field Engineering Technician            | \$76.80                   |
| HNTB Corporation           | Brett Nuckols                    | Constructability Reviewer               | \$115.12                  |
| HNTB Corporation           | Colin Peppard                    | Project Delivery Consultant             | \$161.12                  |
| HNTB Corporation           | Luis Piek                        | Senior Tunnel Engineer                  | \$144.24                  |
| HNTB Corporation           | Anderson Ren                     | Engineering Project Manager             | \$90.32                   |
| HNTB Corporation           | John Schlick                     | Senior OCS Engineer                     | \$150.40                  |
| HNTB Corporation           | Amirhossein Tabatabaei (KP)      | Scheduling Lead                         | \$100.64                  |
| HNTB Corporation           | Brandon Wong (KP)                | Project Quality Manager                 | \$87.68                   |
| HNTB Corporation           | Gregory Wong                     | Systems Engineer                        | \$105.28                  |
| Cinquini & Passarino, Inc. | James Dickey                     | Professional Land Surveyor <sup>2</sup> | \$111.00                  |
| Cinquini & Passarino, Inc. | Anthony G. Cinquini              | Principal Professional Land Surveyor    | \$111.00                  |
| Cinquini & Passarino, Inc. | Mark Andrilla                    | Professional Land Surveyor              | \$66.57                   |
| Cinquini & Passarino, Inc. | Andrew Jetson-Diehl              | Professional Land Surveyor              | \$53.84                   |
| Cinquini & Passarino, Inc. | Clayton Ferrari                  | Staff Surveyor II                       | \$49.73                   |
| Cinquini & Passarino, Inc. | Sophia Furtado                   | Staff Surveyor I                        | \$33.00                   |
| Cinquini & Passarino, Inc. | Christopher Silva                | Survey Technician I                     | \$31.50                   |
| Cinquini & Passarino, Inc. | Jeffrey Meyer                    | Staff Survey Technician III             | \$54.55                   |
| Cinquini & Passarino, Inc. | William Butler                   | Party Chief <sup>2</sup>                | \$65.79                   |
| Cinquini & Passarino, Inc. | Fabian Martinez                  | Chainman <sup>2</sup>                   | \$54.28                   |
| Cinquini & Passarino, Inc. | William Butler                   | Party Chief – Night <sup>2</sup>        | \$74.01                   |

| <b>Firm</b>                                 | <b>Employee Name<sup>3</sup></b> | <b>Position / Classification</b>              | <b>Direct Hourly Rate</b> |
|---------------------------------------------|----------------------------------|-----------------------------------------------|---------------------------|
| Cinquini & Passarino, Inc.                  | Fabian Martinez                  | Chainman – Night <sup>2</sup>                 | \$61.07                   |
| Cinquini & Passarino, Inc.                  | William Butler                   | Party Chief – Night Saturday <sup>2</sup>     | \$111.02                  |
| Cinquini & Passarino, Inc.                  | Fabian Martinez                  | Chainman – Night Saturday <sup>2</sup>        | \$91.60                   |
| Cinquini & Passarino, Inc.                  | William Butler                   | Party Chief – Night Sunday <sup>2</sup>       | \$148.02                  |
| Cinquini & Passarino, Inc.                  | Fabian Martinez                  | Chainman – Night Sunday <sup>2</sup>          | \$122.14                  |
| Cornerstone Transportation Consulting, Inc. | Walid Wahidi, PE, PMP, PMI-Sp    | Scheduler                                     | \$103.00                  |
| Cornerstone Transportation Consulting, Inc. | Mohammad A. Usmani               | Project Controls Specialist                   | \$90.00                   |
| Cornerstone Transportation Consulting, Inc. | Jenkin Hui, PE                   | Field Engineer                                | \$81.53                   |
| Cornerstone Transportation Consulting, Inc. | Sunil Shah, CPE, LEED AP         | Cost Estimator                                | \$82.56                   |
| Cornerstone Transportation Consulting, Inc. | Aijaz Mohammad Usmani            | Scheduler                                     | \$90.00                   |
| Cornerstone Transportation Consulting, Inc. | Mark Chan                        | System Engineer/Safety Certification Engineer | \$91.31                   |
| Cornerstone Transportation Consulting, Inc. | Andres Alvarado, PMP             | Assistant Resident Engineer (ARE)             | \$92.27                   |
| Cornerstone Transportation Consulting, Inc. | Carlos Mattos                    | Project Engineer / Field Engineer             | \$67.31                   |
| Cornerstone Transportation Consulting, Inc. | David Wan                        | Field Inspector                               | \$79.92                   |
| Cornerstone Transportation Consulting, Inc. | Nicole Price                     | Administrative Assistant                      | \$40.07                   |
| Cornerstone Transportation Consulting, Inc. | Anna Tryc                        | Administrative Assistant                      | \$52.80                   |
| Cornerstone Transportation Consulting, Inc. | Diana Cervantes                  | Document Control                              | \$55.40                   |
| Cornerstone Transportation Consulting, Inc. | Teodor Rativo                    | CADD                                          | \$54.08                   |
| ENGEO Incorporated                          | Leroy Chan                       | Principal Geotechnical Engineer               | \$89.90                   |
| ENGEO Incorporated                          | Jesse Brockman                   | Senior Environmental Engineer                 | \$64.42                   |
| ENGEO Incorporated                          | Julia Moriarty                   | Stormwater Engineer                           | \$93.75                   |
| EXARO                                       | Jose Dominguez                   | Operations Manager <sup>2</sup>               | \$67.31                   |
| ISI Inspection Services, Inc.               | Tobin Gaut                       | Inspection Manager <sup>2</sup>               | \$72.06                   |

| <b>Firm</b>                           | <b>Employee Name<sup>3</sup></b> | <b>Position / Classification</b>         | <b>Direct Hourly Rate</b> |
|---------------------------------------|----------------------------------|------------------------------------------|---------------------------|
| KELLCO Services Inc.                  | Tim Cannard                      | Engineering Technician <sup>1</sup>      | \$221.75                  |
| M Lee Corporation                     | Franklin Lee                     | Senior Cost Estimator                    | \$86.00                   |
| PRO-TEC Safety Consultants Inc.       | Ralph Morales (KP)               | Construction Safety Lead                 | \$105.00                  |
| PRO-TEC Safety Consultants Inc.       | Anthony Vargas                   | Sr. Safety Manager                       | \$105.00                  |
| Robin Chiang & Company                | David Fung (KP)                  | Lead Architect                           | \$102.77                  |
| Robin Chiang & Company                | Anshul Gupta                     | Architect/Designer                       | \$62.09                   |
| Robin Chiang & Company                | Eric Petrie                      | Intermediate Designer                    | \$64.38                   |
| Robin Chiang & Company                | Maclean Carr                     | Sr. Architect/Planner                    | \$93.06                   |
| Robin Chiang & Company                | Peggy Chiang                     | Project Administration                   | \$82.72                   |
| Robin Chiang & Company                | Robin Chiang                     | Principal Architect/Architecture         | \$114.85                  |
| Robin Chiang & Company                | Roumel Butiong                   | Senior PM/Designer                       | \$84.82                   |
| Robin Chiang & Company                | Victor Payes                     | Designer                                 | \$50.43                   |
| RSE Corporation                       | Aaron Marx                       | Senior Signals Engineer                  | \$135.00                  |
| Smith Emery                           | Matt Holland                     | Inspector Group 1, Night <sup>2</sup>    | \$74.13                   |
| Smith Emery                           | N/A                              | UT Inspection Vehicle <sup>4</sup>       | \$900.00/hour             |
| Smith Emery                           | N/A                              | UT Inspection Walking Stick <sup>4</sup> | \$200.00/hour             |
| STRUCTUS, Inc                         | Wayky Duong                      | Design Engineer                          | \$40.50                   |
| STRUCTUS, Inc                         | Anh Trong Nguyen                 | Principal Engineer                       | \$90.87                   |
| STRUCTUS, Inc                         | Minh Ton Tran                    | Drafter                                  | \$39.00                   |
| STRUCTUS, Inc                         | Dong Xiong                       | Project Engineer                         | \$67.50                   |
| STRUCTUS, Inc                         | Peter Yu                         | Structural Engineer                      | \$102.36                  |
| Telamon Engineering Consultants, Inc. | Mennor Chan                      | Professional Land Surveyor <sup>2</sup>  | \$90.41                   |
| Telamon Engineering Consultants, Inc. | Richard Horner                   | Chief of Party <sup>2</sup>              | \$64.75                   |
| Telamon Engineering Consultants, Inc. | Aaron Minsk                      | Office Surveyor                          | \$45.24                   |
| Telamon Engineering Consultants, Inc. | Rudyard Vance                    | Chainman/Rodman <sup>2</sup>             | \$54.28                   |

| <b>Firm</b>                           | <b>Employee Name<sup>3</sup></b> | <b>Position / Classification</b> | <b>Direct Hourly Rate</b> |
|---------------------------------------|----------------------------------|----------------------------------|---------------------------|
| Telamon Engineering Consultants, Inc. | Doug Zuuring                     | Principal Utility Engineer       | \$94.02                   |
| Wilson Ihrig/RWDI USA LLC             | Derek L. Watry                   | Principal Acoustical Engineer    | \$91.05                   |
| Wilson Ihrig/RWDI USA LLC             | Gary Glickman                    | Technical Director               | \$91.05                   |
| Wilson Ihrig/RWDI USA LLC             | Sarah Kaddatz                    | Senior Acoustician               | \$63.24                   |
| Wilson Ihrig/RWDI USA LLC             | Fletcher Pratt                   | Acoustician                      | \$48.41                   |
| Wilson Ihrig/RWDI USA LLC             | Charysse Redwood                 | Acoustician                      | \$41.20                   |
| Wilson Ihrig/RWDI USA LLC             | Lauren Garrett                   | Project Coordinator              | \$32.21                   |
| YEI Engineers, Inc.                   | Brandon Yee, PE                  | Project Electrical Engineer      | \$90.61                   |
| YEI Engineers, Inc.                   | Jennifer Huynh, PE               | Senior Electrical Engineer       | \$85.95                   |
| YEI Engineers, Inc.                   | Hubert Hidalgo, PE               | Senior Plumbing Engineer         | \$96.27                   |
| YEI Engineers, Inc.                   | Bryan Hayes, PE                  | Senior Mechanical Engineer       | \$76.92                   |

**Notes:**

- (1) Fully burdened rates, inclusive of Direct Labor, Overhead, and Profit, are provided for this position/service. Additional compensation related to Overhead and Profit are ineligible.
- (2) Position may be subject to Department of Industrial Relations (DIR) prevailing wage requirements. Certified payroll must be submitted in LCPTracker.
- (3) Employees designated KP are subject to the Key Personnel requirements of Section 4.4.
- (4) Fixed lump sum rate, which is subject to refinement based on the negotiated scope of work under future task orders. Additional direct labor, overhead rates, and profit not permitted. Mobilization costs and daily inspection rates for ultrasonic rail inspection services may be negotiated on a task order basis.

**Appendix C**  
**Schedule of Overhead Rates for Contractor and all Subcontractors**

| <b>Firm</b>                                 | <b>Overhead Rate (%)</b> |
|---------------------------------------------|--------------------------|
| HNTB Corporation                            | 140.80%                  |
| Cinquini & Passarino, Inc.                  | 174.29%                  |
| Cornerstone Transportation Consulting, Inc. | 130.30%                  |
| ENGEO Incorporated                          | 287.00%                  |
| EXARO Technologies Corporation              | 204.59%                  |
| ISI Inspection Services, Inc.               | 159.36%                  |
| KELLCO Services Inc.                        | N/A <sup>1</sup>         |
| M Lee Corporation                           | 129.10%                  |
| Pro-Tec Safety Consultants Inc.             | 137.23%                  |
| Robin Chiang & Company                      | 160.42%                  |
| RSE Corporation                             | 131.00%                  |
| Smith Emery Laboratories                    | 167.92%                  |
| STRUCTUS, Inc.                              | 173.29%                  |
| Telamon Engineering Consultants, Inc.       | 221.97%                  |
| Wilson Ihrig/RWDI USA LLC                   | 193.00%                  |
| YEI Engineers, Inc.                         | 200.40%                  |

**Notes:**

(1) Fully burdened rates provided in lieu of FAR Overhead rate.

## Appendix D

### TASK ORDER FORM

#### SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Contract Title: As-Needed Specialized Engineering Services  
 Project Title: \_\_\_\_\_

Contract No.: CS-  
 Project No.: M000.0

TASK ORDER FORM-TASK ORDER NO. ### ##

|                                                                                                                                                                        |              |                                             |             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------------------------|-------------|
| Task Title: _____ Services                                                                                                                                             |              | Date Initiated: [RFP Date]                  |             |
| <input type="checkbox"/> New Task Order                                                                                                                                |              | <input type="checkbox"/> Revised Task Order |             |
| <b>Work to be Performed:</b><br><br>Provide [type] services for the [project] as described in the attached Consultant's final proposal dated [date of final proposal]. |              |                                             |             |
| <b>Schedule:</b><br>Duration: <u>(#)</u> [Months/Years] ( <u>   </u> Days)                                                                                             |              |                                             |             |
| Total Agreed Amount: \$                                                                                                                                                |              | Liquidated Damages (if applicable): \$      |             |
| <b>Funding Information:</b>                                                                                                                                            |              |                                             |             |
| Project ID                                                                                                                                                             | Authority ID | Dept ID                                     | Activity ID |
|                                                                                                                                                                        |              |                                             |             |
| <b>Deliverables</b>                                                                                                                                                    |              |                                             |             |
| Description                                                                                                                                                            |              | Date Required                               |             |
| 1. Refer to Consultant's final proposal dated _____.                                                                                                                   |              | TBD                                         |             |
| <b>APPROVALS</b>                                                                                                                                                       |              |                                             |             |
| Submitted _____                                                                                                                                                        |              | Date _____                                  |             |
| Project Manager                                                                                                                                                        |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Engineering                                                                                                                                                            |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Program Delivery & Construction Management                                                                                                                             |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Planning and Project Delivery                                                                                                                                          |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Section Lead, Contract Administration                                                                                                                                  |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Manager, Contract Administration                                                                                                                                       |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Director of Contracts and Procurement                                                                                                                                  |              |                                             |             |

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

**Contract Title:** As-Needed Specialized Engineering Services  
**Project Title:** \_\_\_\_\_

**Contract No.:** CS-  
**Project No.:** M000.0

**TASK ORDER FORM-TASK ORDER NO. ###-##**

**Proposed Staff and Budget:**

| Task(s)                                  |  | Fixed Price<br>(including Profit) |   |
|------------------------------------------|--|-----------------------------------|---|
| Task/Sub-Task XX - [Task/Sub-Task title] |  | \$                                | - |
| Task/Sub-Task XX - [Task/Sub-Task title] |  | \$                                | - |
| <b>Total Lump Sum Cost</b>               |  | \$                                | - |

  

| Name                                          | Hours | Direct Hourly<br>Rate | Cost    |
|-----------------------------------------------|-------|-----------------------|---------|
| <b>Prime: [Name of Prime]</b>                 |       |                       |         |
| [name], [classification]                      |       |                       | \$ -    |
| [name], [classification]                      |       |                       | \$ -    |
| [name], [classification]                      |       |                       | \$ -    |
| <b>Total</b>                                  |       |                       | \$ -    |
| <b>Overhead</b>                               | %     |                       | #VALUE! |
|                                               |       |                       |         |
| <b>Subconsultant: [Name of Subconsultant]</b> |       |                       |         |
| [name], [classification]                      |       |                       | \$ -    |
| [name], [classification]                      |       |                       | \$ -    |
| <b>Total</b>                                  |       |                       | \$ -    |
| <b>Overhead</b>                               | %     |                       | #VALUE! |
|                                               |       |                       |         |
| <b>Total Direct Labor</b>                     |       |                       | \$ -    |
| <b>Total Overhead</b>                         |       |                       | #VALUE! |
| <b>Fixed Fee/Profit</b>                       |       |                       |         |
| <b>Other Direct Costs (ODC)</b>               |       |                       |         |
|                                               |       |                       |         |
| <b>Total Amount of Task Order</b>             |       |                       | #VALUE! |

**Payment Method:**

[e.g. To be paid as lump sum after acceptance of all Deliverables for each task.]

**Retention:** \_\_\_\_% (if applicable)

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

**Contract Title:** As-Needed Specialized Engineering Services  
**Project Title:** \_\_\_\_\_

**Contract No.:** CS-  
**Project No.:** M000.0

**TASK ORDER FORM-TASK ORDER NO. ### ##**

|                                                             |             |
|-------------------------------------------------------------|-------------|
| <b>Approved by [Name of Prime] (Consultant):</b>            |             |
|                                                             |             |
| <b>Signature</b><br>[name]<br><b>Project Manager</b>        | <b>Date</b> |
|                                                             |             |
| <b>Signature</b><br>[name]<br>[Title i.e. President/VP/CEO] | <b>Date</b> |
|                                                             |             |

## Appendix E

### FTA REQUIREMENTS FOR PERSONAL/PROFESSIONAL SERVICES CONTRACTS

#### I. DEFINITIONS

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

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

## **II. FEDERAL CHANGES**

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

## **III. ACCESS TO RECORDS**

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

## **IV. DEBARMENT AND SUSPENSION**

- A.** The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally

funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

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

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

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

#### **VI. NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

- A.** If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the City, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the City is located. The Contractor must include an equivalent provision in its sub agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
- B.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- C.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement between the FTA and the City, and any Amendments thereto, or the

Federal Government's administration or enforcement of federal laws, regulations, and requirements.

- D. Additional Notice to U.S. DOT Inspector General.** The Contractor must promptly notify the City, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the City is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement with the City involving a principal, officer, employee, agent, or Third Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

## **VII. CIVIL RIGHTS**

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

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

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

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

## **VIII. NONDISCRIMINATION ON THE BASIS OF DISABILITY**

The Contractor agrees to comply with the following federal prohibitions against discrimination based on disability:

### **A. Federal laws, including:**

1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
2. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., Titles I, II, and III, which requires that accessible facilities and services be made available to individuals with disabilities;
3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
5. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities

**B. Federal regulations and guidance, including:**

1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
2. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38;
4. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39;
5. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
6. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
7. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
8. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, subpart F;
9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
10. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
11. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
12. Other applicable federal civil rights and nondiscrimination regulations and guidance..

**IX. SBE/DBE ASSURANCES**

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

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

to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

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

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.
- B.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C.** The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

- A. Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
  - 1. Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such

data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

- 2. Federal License.** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:

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

- 6. Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
- 7. Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- C. Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- D. Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

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

- A. Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar Day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages** – The City and County of San Francisco shall upon its own action or upon written request of an authorized

representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

### **XIII. ENERGY CONSERVATION REQUIREMENTS**

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

### **XIV. SEISMIC SAFETY REQUIREMENTS**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

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

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

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

- A.** Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor

agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

## **XVII. PRIVACY**

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

## **XVIII. DRUG AND ALCOHOL TESTING**

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

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

See Section 8.1 of Agreement Terms and Conditions.

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

See Section 8.2 of Agreement Terms and Conditions.

## **XXI. BUY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials (*excluding* cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) used in FTA-funded projects are produced in the United States, unless a waiver has been

granted by FTA or the product is subject to a general waiver. “Construction materials” include an article, material, or supply that is or consists primarily of:

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

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

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

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

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

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

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

### **XXIV. RECYCLED PRODUCTS**

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

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

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

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.
- C. Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle

complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

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

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

## **XXVII. FLY AMERICA**

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

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

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

- 1. General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's Project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.
- 2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- 3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas** – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

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

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

**XXX. TEXTING WHILE DRIVING; DISTRACTED DRIVING**

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

**XXXI. SEAT BELT USE**

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

**XXXII. DISPUTE RESOLUTION PROCEDURE**

See Section 11.6 of the Agreement Terms and Conditions.

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

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

**XXXIV. PROMPT PAYMENT**

- A. In accordance with SFMTA’s SBE Program, no later than three Days from the date of Contractor’s receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors. Unless the prime Contractor notifies the CCO in writing within 10 business days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subcontractor. Within five business days of such payment,

Contractor shall confirm that all subs have been paid via the B2GNow System. Failure to submit all required payment information into the B2GNow System may result in the suspension of future progress payments to Contractors.

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

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

As provided by 49 U.S.C. § 5325(k):

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

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

**B.** Contractor also assures that its subcontractor will:

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

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

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

**Appendix F**

**Small Business Enterprise (SBE) Program under SFMTA's  
Disadvantaged Business Enterprise (DBE) Program for Professional  
and Technical Services  
Requirements for Architects, Engineers, Planners, Environmental Scientists and  
Other Professional Services Contracts**

**Appendix G**  
**Directory of Subcontractors**

| <b>Firm Name</b>                                                | <b>Contact<br/>(Name, Email Address, &amp;<br/>Phone Number)</b>                                                     | <b>Address</b>                                                  | <b>SBE</b> |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|------------|
| Cinquini & Passarino, Inc.                                      | Jim Dickey<br><a href="mailto:jdickey@cinquinipassarino.com">jdickey@cinquinipassarino.com</a><br>(707) 542-6268     | 1360 N. Dutton Avenue, Suite 150<br>Santa Rosa, CA 95401        | X          |
| Cornerstone Transportation Consulting, Inc.                     | Ming Ng<br><a href="mailto:mng@cornerstoneconcilium.com">mng@cornerstoneconcilium.com</a><br>(415) 705-7800          | 241 Fifth Street,<br>San Francisco, CA 94103                    | X          |
| ENGEO Incorporated                                              | Leroy Chan<br><a href="mailto:lchan@engeo.com">lchan@engeo.com</a><br>(510) 717-7100                                 | 751 13 <sup>th</sup> Street<br>San Francisco, CA 94130          |            |
| EXARO Technologies Corporation                                  | Arthur Servin<br><a href="mailto:ase@exarotec.com">ase@exarotec.com</a><br>(650) 777-4324                            | 1831 Bayshore Highway,<br>Burlingame, CA 94010                  | X          |
| ISI Inspection Services, Inc.,<br>dba Inspection Services, Inc. | Leslie Sakai<br><a href="mailto:LSakai@inspectionsservices.net">LSakai@inspectionsservices.net</a><br>(510) 900 2100 | 1798 University Avenue<br>Berkeley, CA 94703                    | X          |
| KELLCO Services, Inc.                                           | Michael Feldman<br><a href="mailto:info@kellco.com">info@kellco.com</a><br>(510) 786-9751                            | 3137 Diablo Avenue<br>Hayward, CA 94545                         | X          |
| M Lee Corporation                                               | Emily Liu<br><a href="mailto:eliu@mlcecorp.com">eliu@mlcecorp.com</a><br>(415) 693-0236                              | 601 Montgomery Street, Ste 2040<br>San Francisco, CA 94111      | X          |
| Pro-Tec Safety Consultants Inc.                                 | Ralph Morales<br><a href="mailto:Ralph@protecsafetyinc.com">Ralph@protecsafetyinc.com</a><br>(415) 294-1438          | 249 Onondaga Avenue<br>San Francisco, CA 94112                  | X          |
| Robin Chiang & Company<br>(RCC)                                 | Peggy Chiang<br><a href="mailto:pchiang@designbythebay.com">pchiang@designbythebay.com</a><br>(415) 995-9870         | 245 5 <sup>th</sup> Street, Unit 104<br>San Francisco, CA 94103 | X          |
| RSE Corporation dba RSE                                         | Phil Leong<br><a href="mailto:pleong@rsecorp.com">pleong@rsecorp.com</a><br>(650) 826-1858                           | 1820 Gateway Drive, Suite 200<br>San Mateo, CA 94404            | X          |
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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**

**AECOM Technical Services, Inc.**

**Contract No. CS-195  
(CCO No. 26-1677)**

## Table of Contents

|                                                                                |    |
|--------------------------------------------------------------------------------|----|
| <b>Article 1: Definitions</b>                                                  | 1  |
| <b>Article 2: Term of the Agreement</b>                                        | 4  |
| 2.1 Term                                                                       | 4  |
| 2.2 Options to Extend                                                          | 4  |
| <b>Article 3: Financial Matters</b>                                            | 4  |
| 3.1 Certification of Funds; Budget and Fiscal Provisions                       | 4  |
| 3.1.1 Termination in the Event of Non-Appropriation                            | 4  |
| 3.1.2 Maximum Costs                                                            | 4  |
| 3.2 Authorization to Commence Work                                             | 5  |
| 3.3 Compensation                                                               | 5  |
| 3.3.1 Calculation of Task Order Compensation and Contract Not to Exceed Amount | 5  |
| 3.3.2 Payment Limited to Satisfactory Services                                 | 8  |
| 3.3.3 Withhold Payments                                                        | 8  |
| 3.3.4 Invoice Format                                                           | 8  |
| 3.3.5 Prompt Payment of Subcontractors                                         | 10 |
| 3.3.6 Getting Paid by the City for Services                                    | 10 |
| 3.3.7 Grant-Funded Contracts                                                   | 10 |
| 3.3.8 Payment Terms                                                            | 11 |
| 3.4 Audit and Inspection of Records                                            | 11 |
| 3.5 Submitting False Claims                                                    | 11 |
| 3.6 Payment of Prevailing Wages                                                | 11 |
| 3.6.1 Covered Services                                                         | 11 |
| 3.6.2 Wage Rates                                                               | 12 |
| 3.6.3 Subcontract Requirements                                                 | 12 |
| 3.6.4 Job Site Notices and Records                                             | 12 |
| 3.6.5 Payroll Records                                                          | 12 |
| 3.6.6 Certified Payrolls                                                       | 12 |
| 3.6.7 Compliance Monitoring                                                    | 13 |
| 3.6.8 Remedies                                                                 | 13 |
| 3.7 Apprentices                                                                | 13 |
| <b>Article 4: Services and Resources</b>                                       | 14 |
| 4.1 Services Contractor Agrees to Perform                                      | 14 |
| 4.2 Changes                                                                    | 14 |

|                                                                                  |           |
|----------------------------------------------------------------------------------|-----------|
| 4.3 Task Order Procedures.....                                                   | 14        |
| 4.3.1 Task Order Requirements .....                                              | 14        |
| 4.3.2 Task Order Request .....                                                   | 16        |
| 4.3.3 Contractor Request for Information.....                                    | 16        |
| 4.3.4 Contractor Task Order Proposal .....                                       | 16        |
| 4.3.5 Negotiation of Cost and Profit.....                                        | 17        |
| 4.3.6 Record of Negotiations .....                                               | 17        |
| 4.3.7 SBE Goals.....                                                             | 17        |
| 4.3.8 Notice to Proceed.....                                                     | 17        |
| 4.3.9 Changes to Task Order Pricing.....                                         | 17        |
| 4.3.10 Failure to Agree on Terms of Task Order .....                             | 17        |
| 4.4. Qualified Personnel.....                                                    | 18        |
| 4.4.1 Substitution of Key Personnel .....                                        | 18        |
| 4.5 Subcontracting .....                                                         | 18        |
| 4.6 Independent Contractor; Payment of Employment Taxes and Other Expenses ..... | 19        |
| 4.6.1 Independent Contractor .....                                               | 19        |
| 4.6.2 Payment of Employment Taxes and Other Expenses.....                        | 19        |
| 4.7 Assignment .....                                                             | 20        |
| 4.8 Service Warranties .....                                                     | 20        |
| 4.9 Liquidated Damages .....                                                     | 20        |
| 4.10 Reserved. (Performance Bond).....                                           | 20        |
| 4.11 Emergency - Priority 1 Service.....                                         | 20        |
| <b>Article 5: Insurance and Indemnity .....</b>                                  | <b>20</b> |
| 5.1 Insurance .....                                                              | 20        |
| 5.1.1 Required Coverages.....                                                    | 20        |
| 5.1.2 Additional Insured .....                                                   | 21        |
| 5.1.3 Waiver of Subrogation.....                                                 | 22        |
| 5.1.4 Primary Insurance.....                                                     | 22        |
| 5.1.5 Other Insurance Requirements .....                                         | 22        |
| 5.2 Indemnification .....                                                        | 23        |
| 5.3 Indemnification and Defense Obligations For Design Professionals .....       | 24        |
| 5.3.1 Defense Obligations.....                                                   | 24        |
| 5.3.2 Indemnity Obligations .....                                                | 24        |
| 5.3.3 Copyright Infringement .....                                               | 24        |

|                                                                                                           |    |
|-----------------------------------------------------------------------------------------------------------|----|
| 5.3.4 Severability Clause Specific to Indemnification and/or Defense Obligations .....                    | 24 |
| <b>Article 6: Liability of the Parties</b> .....                                                          | 24 |
| 6.1 Liability of City.....                                                                                | 24 |
| 6.2 Liability for Use of Equipment.....                                                                   | 25 |
| 6.3 Liability for Incidental and Consequential Damages.....                                               | 25 |
| <b>Article 7: Payment of Taxes</b> .....                                                                  | 25 |
| 7.1 Contractor to Pay All Taxes.....                                                                      | 25 |
| 7.2 Possessory Interest Taxes .....                                                                       | 25 |
| 7.3 Withholding .....                                                                                     | 25 |
| <b>Article 8: Termination and Default</b> .....                                                           | 25 |
| 8.1 Termination for Convenience .....                                                                     | 25 |
| 8.2 Termination for Default; Remedies .....                                                               | 27 |
| 8.3 Non-Waiver of Rights.....                                                                             | 29 |
| 8.4 Rights and Duties upon Termination or Expiration.....                                                 | 29 |
| <b>Article 9: Rights in Deliverables</b> .....                                                            | 30 |
| 9.1 Ownership of Results .....                                                                            | 30 |
| 9.2 Works for Hire .....                                                                                  | 30 |
| <b>Article 10: Additional Requirements Incorporated by Reference</b> .....                                | 30 |
| 10.1 Laws Incorporated by Reference .....                                                                 | 30 |
| 10.2 Governmental Conduct-Related Contractual Obligations .....                                           | 30 |
| 10.2.1 Conflict of Interest.....                                                                          | 30 |
| 10.2.2 Prohibition on Use of Public Funds for Political Activity .....                                    | 30 |
| 10.2.3 Limitations on Contributions.....                                                                  | 31 |
| 10.3 Employment-Related Contractual Obligations.....                                                      | 31 |
| 10.3.1 Small Business Enterprise (SBE) Program under Disadvantaged Business Enterprise (DBE) Program..... | 31 |
| 10.3.2 Minimum Compensation Ordinance.....                                                                | 32 |
| 10.3.3 Health Care Accountability Ordinance.....                                                          | 32 |
| 10.3.4 First Source Hiring Program.....                                                                   | 33 |
| 10.3.5 Reserved (Working with Minors).....                                                                | 33 |
| 10.3.6 Alcohol and Drug-Free Workplace .....                                                              | 33 |
| 10.3.7 Nondiscrimination in Contracts .....                                                               | 33 |
| 10.3.8 Nondiscrimination in the Provision of Employee Benefits .....                                      | 33 |
| 10.4 Environmental-Related Contractual Obligations .....                                                  | 33 |
| 10.4.1 Reserved. (Packaged Water Prohibition).....                                                        | 34 |

|                                                                               |    |
|-------------------------------------------------------------------------------|----|
| 10.4.2 Tropical Hardwood and Virgin Redwood Ban .....                         | 34 |
| 10.4.3 Food Service Waste Reduction Requirements .....                        | 34 |
| 10.4.4 Reserved. (Sugar-Sweetened Beverage Prohibition).....                  | 34 |
| 10.5 Slavery Era Disclosure.....                                              | 34 |
| 10.6 Reserved. (Nonprofit Contractor Obligations) .....                       | 34 |
| <b>Article 11: General Provisions</b> .....                                   | 34 |
| 11.1 Notices to the Parties .....                                             | 34 |
| 11.2 Compliance with Laws Requiring Access for People with Disabilities ..... | 34 |
| 11.3 Incorporation of Recitals.....                                           | 35 |
| 11.4 Sunshine Ordinance .....                                                 | 35 |
| 11.5 Modification of this Agreement.....                                      | 35 |
| 11.6 Dispute Resolution Procedure.....                                        | 35 |
| 11.6.1 Negotiation; Alternative Dispute Resolution.....                       | 35 |
| 11.6.2 Government Code Claim Requirement .....                                | 35 |
| 11.7 Agreement Made in California; Venue.....                                 | 36 |
| 11.8 Construction.....                                                        | 36 |
| 11.9 Entire Agreement.....                                                    | 36 |
| 11.10 Compliance with Laws .....                                              | 36 |
| 11.11 Severability .....                                                      | 36 |
| 11.12 Cooperative Drafting .....                                              | 36 |
| 11.13 Order of Precedence.....                                                | 36 |
| 11.14 Notification of Legal Requests .....                                    | 36 |
| 11.15 No Third-Party Beneficiaries.....                                       | 37 |
| <b>Article 12: SFMTA Specific Terms</b> .....                                 | 37 |
| 12.1 Large Vehicle Driver Safety Training Requirements .....                  | 37 |
| <b>Article 13: Data and Security</b> .....                                    | 37 |
| 13.1 Nondisclosure of Private, Proprietary or Confidential Information .....  | 37 |
| 13.1.1 Protection of Private Information .....                                | 37 |
| 13.1.2 City Data; Confidential Information.....                               | 37 |
| 13.2 Reserved. (Payment Card Industry (PCI) Requirements).....                | 38 |
| 13.3 Reserved. (Business Associate Agreement) .....                           | 38 |
| 13.4 Management of City Data and Confidential Information .....               | 38 |
| 13.4.1 Use of City Data .....                                                 | 38 |
| 13.4.2 Use of Generative Artificial Intelligence in Deliverables .....        | 38 |

|                                                                                     |    |
|-------------------------------------------------------------------------------------|----|
| 13.4.3 Disposition of City Data .....                                               | 38 |
| 13.5 Ownership of City Data .....                                                   | 39 |
| 13.6 Loss or Unauthorized Access to City’s Data; Security Breach Notification ..... | 39 |
| 13.7 Cybersecurity Risk Assessment .....                                            | 39 |
| <b>Article 14: Appendices</b> .....                                                 | 39 |
| 14.1 Appendices .....                                                               | 39 |
| <b>Article 15: MacBride and Signature</b> .....                                     | 40 |
| 15.1 MacBride Principles - Northern Ireland .....                                   | 40 |

**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  
AECOM Technical Services, Inc.  
Contract No. CS-195**

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

**Recitals**

**A.** The SFMTA wishes to retain Contractor for As-Needed Specialized Engineering Services for multiple federally funded projects.

**B.** Contractor was competitively selected as one of the highest-qualified scorers pursuant to a Request for Proposals (RFP) issued on February 19, 2026 under San Francisco Administrative Code Section 6.43.

**C.** Contractor committed to a participation goal of 25% for Small Business Enterprise(s) (“SBEs”) for this Agreement.

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

**E.** Approval for the Agreement was obtained on February 2, 2026 from the Civil Service Commission under PSC number DHRPSC0005828 which authorizes the award of multiple agreements, to cover the full amount of this contract and the individual duration of which cannot exceed five years.

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

**1.2** “**Appendices**” means the appendices listed in Article 14 (“Appendices”) herein.

**1.3** “**Artificial Intelligence**” or “**Artificial Intelligence Model**” means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

**1.4** “**Artificial Intelligence System**” means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

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

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

**1.7** “**City Data**” means all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information and Deliverable Data.

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

**1.9** “**Confidential Information**” means confidential City information including, but not limited to, personal identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information. Confidential Information includes, without limitation, City Data.

**1.10** “**Contractor**” means AECOM Technical Services, Inc., 300 Lakeside Drive, Suite 400, Oakland, CA 94612.

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

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

**1.13** “**Deliverable Data**” means any data that is required to be delivered to City as a Deliverable, or as a part of a Deliverable, under this Agreement.

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

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

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

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

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

**1.19 “Generative Artificial Intelligence”** means Artificial Intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the Artificial Intelligence’s training data.

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

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

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

**1.23 “Personal Identifiable Information (PII)”** means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household as further defined in the California Consumer Privacy Act.

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

**1.25 “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.

**1.26 “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, Deliverables, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

**1.27 “Small Business Enterprise” or “SBE”** means a for-profit, small business concern with a three-year average gross revenue that do not exceed the thresholds set forth in Appendix F, Section III.B and either: 1) is certified under any of the following programs: the

State of California's Small Business Program with the Department of General Services (State Program), the City and County of San Francisco's LBE Program (City Program), or 2) has received written confirmation from CCO that it meets the SFMTA's program eligibility requirements.

**1.28 "Task Order"** means a written directive from the SFMTA to the Contractor to perform specified work, issued under the procedures described in Section 4.3 below.

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

**2.1 Term.** The term of this Agreement shall commence on the Effective Date and expire on the date three years (1,095 calendar days) after the Effective Date, unless earlier terminated as otherwise provided herein.

**2.2 Options to Extend.** The SFMTA has the option to renew the Agreement for a period of two (2) additional years. The SFMTA only may extend this Agreement beyond the expiration date in accordance with Administrative Code Section 6.43 at the SFMTA's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **Article 3 Financial Matters**

### **3.1 Certification of Funds; Budget and Fiscal Provisions**

**3.1.1 Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to the 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. The City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

and the Parties having modified this Agreement as provided in Section 11.5 (Modification of this Agreement).

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

### **3.3 Compensation.**

**3.3.1 Calculation of Task Order Compensation and Contract Not to Exceed Amount.** The SFMTA will pay Contractor on a task-order basis for Services it performs under this Agreement. The total amount of the Task Orders awarded under this Agreement shall not exceed (“NTE”) Five Million Dollars (\$5,000,000). This amount is based on City’s estimated spend for the contract term. Should SFMTA’s actual spend exceed its estimated spend for the contract term, SFMTA may in its sole discretion increase the contract NTE for the contract term, subject to the limitations in San Francisco Administrative Code section 6.43. City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement. 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 subject to a total not to exceed amount (using the hourly labor rates set forth in Appendix B and Appendix C plus a fixed profit). The City may withhold a portion of payment as a reasonable retention, not to exceed 5%, until the conclusion of the Task Order. Contractor’s compensation for Task Orders shall be based on the following:

**(a) Direct Hourly Labor Rates.** The direct hourly labor rates in Appendix B are fixed negotiated rates and shall not change for the first 12 months after the Effective Date of this Agreement. Thereafter, during the term of this Agreement, Contractor may request annual escalation based on the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U). No direct hourly rate may be increased without prior written approval of the SFMTA. Contractor must request any escalation of these direct hourly labor rates no later than 30 Days before the anniversary of the Effective Date of this Agreement, and failure to timely do so may result in a denial of the request. Any requests for escalation of direct hourly labor rates must include evidence of the change in the CPI-U, evidence of payroll documentation, and an updated Appendix B for the SFMTA’s approval. The SFMTA will review all requests for escalation of direct hourly labor rates within 30 Days of receipt and notify Contractor of either an approval or denial. If approved, the new rates will become effective as of the date that a contract modification is executed, but no earlier than the anniversary of the Effective Date of this Agreement. In no event will the start of the new rates be backdated. Subsequent rate escalations will be effective no less than one year after the most recent prior rate escalation.

**(b) Overhead Rates.**

(i) The overhead rates in Appendix C shall be billed at that fixed level until 12 months after the Effective Date of this Agreement. Thereafter, during the term of this Agreement, the overhead rates in Appendix C may be adjusted annually with prior written approval from the SFMTA and will be effective as of the date that a contract modification is executed. The Contractor's and subcontractors' overhead rates are subject to audit in compliance with Federal requirements.

(ii) The overhead billing rates in Appendix C, including any adjustment to such rates as provided for above, are subject to readjustment to reflect actual rates 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 Contractor's and all subcontractors' actual rates during the term of this Agreement to the Project Manager. For each rate paid to the Contractor that exceeds the Contractor's or any subcontractor's actual rate, the Contractor shall reimburse to the City the total difference between the rate paid and Contractor's or subcontractor's actual rate during the term of this Agreement. Contractor shall reimburse City within 30 Days of written notice from City seeking reimbursement. For each actual overhead rate of Contractor or subcontractor that exceeds the rate paid to Contractor, City shall pay to Contractor the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Contractor within 60 Days of City's receipt of all of Contractor's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Contractor's rates as provided above.

**(c) Profit.**

(i) The Parties shall negotiate a profit as a lump sum amount for each Task Order, and it shall be no greater than 10% of the total cost of the Task Order. It is understood and agreed that the profit is a fixed amount that cannot be exceeded because of any differences between the estimated number of hours required to perform the Services in a Task Order and the actual number of hours required to perform the work. In no event shall payments to the Contractor exceed the total amount of the Task Order. The SFMTA may approve an increase in the profit only if such increase is required due to an increase in the Services or to additional work that increases the Services. The profit shall not be increased for Contractor's additional level of effort to complete the Services. It is further understood and agreed that the profit is only due and payable for Task Order work for which the SFMTA has given notice to proceed and for which the Contractor has satisfactorily completed.

(ii) The profit will be prorated and paid monthly in proportion to the Services satisfactorily completed. A payment for an individual month shall include that approved portion of the profit allocable to the Task Order work satisfactorily completed during said month and not previously paid. Any portion of the profit not previously paid in the monthly payments shall be included in the final payment. The method of proration may be adjusted by the

SFMTA to reflect deletions or amendments in the project work that are approved as herein described.

(iii) If the Services are reduced, that reduction shall be memorialized in an amendment to the Task Order, and the profit for that work shall be reduced, as negotiated by the Parties, but such reduction shall not be less than the proportional value of the reduced Services.

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

(e) **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, including travel 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, such costs must be documented in detail and pre-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.

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

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

- i. Contractor’s and subcontractors’ personnel relocation costs.

- ii. Purchases of office and field supplies or equipment, unless the supplies or equipment are: (1) not ordinary or typical supplies and equipment; and (2) uniquely required of this Project; and (3) serving only this Project. If all three requirements are met, the costs shall be separately identified in the Task Order. These supplies or equipment will then need to be turned over to the SFMTA at the end of the Contract.
- iii. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable unless otherwise approved by the SFMTA in advance as being necessary (e.g., no viable public transit options available).
- iv. Any travel expenses, including transportation, meals, and lodging costs, that are not approved by the SFMTA.
- v. Any overnight courier services extending outside of the Bay Area between Contractor offices except as approved by the SFMTA.
- vi. Any personal or entertainment expenses.
- vii. Computer usage.
- viii. Facsimile and telecommunications expenses.

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

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

**3.3.4 Invoice Format.** Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and the SFMTA, and include a unique invoice number and a specific invoice date. Payment shall be made by the City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. 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. For Task Orders based on a negotiated number of hours subject to a total not to exceed amount, Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in the Task Order. 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. Each Contractor invoice shall contain the following information, and invoices that do not include all required information or contain inaccurate information will not be processed for payment:

- (a) Contract Number
- (b) Task Order Number
- (c) Purchase Order Number for the Task Order
- (d) PeopleSoft Supplier Name and ID
- (e) Description of the work performed or services rendered
- (f) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced, including timesheets except where Contractor invoices for a Deliverable that is priced in the Task Order as a lump sum, or as estimated milestone payments described in the Task Order budget
- (g) Overhead costs
- (h) Other direct costs
- (i) A copy of the receipts for all expenses invoiced
- (j) Subcontractor costs supported by invoice itemization in the same format as described here
- (k) Profit for current invoice period and amount of profit as of date of invoice. Profit will be calculated as a prorated portion of the total profit for the task for which Contractor seeks payment.
- (l) Contract payment terms
- (m) Sales/use tax (if applicable)
- (n) Total costs
- (o) SFMTA Certificate of Progress Payment Form
- (p) SFMTA Application for Progress Payment Form
- (q) SFMTA Progress Payment Report (SFMTA SBE Form No. 6):  
The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the Progress Payment Report Form. If the Progress Payment Report Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA and Contractor of the omission. If Contractor's failure to provide the Progress Payment Report Form is not explained to the Controller's satisfaction, the Controller will withhold 20 percent of the payment due pursuant to that invoice until the Progress Payment Report Form is provided.

(r) Monthly Progress Report

**3.3.5 Prompt Payment of Subcontractors**

(a) **SBE Payment and Utilization Tracking System.** SBE participation goal applies to this Agreement. Contractor shall: (a) within three (3) business days of City's payment of any invoice to Contractor, pay SBE subcontractors; and (b) within five (5) business days of the City's payment of any invoice to Contractor, confirm its payment to subcontractors using the SFMTA's B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CCO. Failure to submit all required payment information into the B2GNow System may result in the suspension of future progress payments to Contractors.

(b) **Subcontractor Prompt Payment.** In accordance with the SBE Program under the SFMTA's DBE's Program no later than three working days from the date of Contractor's receipt of a progress payment by the City the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors, unless the prime Contractor notifies CCO in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subcontractor. If Contractor does not pay its subcontractors within seven calendar days after receipt of the progress payment, in accordance with San Francisco Administrative Code Section 6.42(f), Contractor shall pay to the subcontractor directly a penalty of 2% of the amount due per month for every month or portion thereof that payment is not made. This provision does not create a private right of action against the City.

**3.3.6 Getting Paid by the City for Services**

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

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

**3.3.7 Grant-Funded Contracts**

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

**(b) Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed due to Contractor's non-compliance with the Grant Terms, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

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

### **3.3.8 Payment Terms**

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

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

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

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

### **3.6 Payment of Prevailing Wages**

**3.6.1 Covered Services.** Services to be performed by Contractor under this Agreement will involve the performance of work covered by Articles 101 through 107 of the San Francisco Labor and Employment Code, as applicable, including without limitation the California Labor Code provisions incorporated therein (collectively, "Covered Services"), all of

which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

**3.6.2 Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Contractor agrees that it shall pay not less than the highest general Prevailing Rate of Wages, as determined by the Board of Supervisors and DIR, to all workers employed by Contractor who perform Covered Services under this Agreement. Copies of the Prevailing Rate of Wages as fixed and determined in accordance with Labor and Employment Code Section 103.2 are available from the City's Office of Labor Standards and Enforcement ("OLSE") and are on file at the Department's principal office or at the job site and shall be made available to any interested party on request.

**3.6.3 Subcontract Requirements.** Contractor shall insert in every subcontract for the performance of Covered Services under this Agreement a provision requiring subcontractor to pay all persons performing labor in connection with Covered Services under the subcontract not less than the highest general prevailing rate of wages as determined by the Board of Supervisors and DIR for such labor or services.

**3.6.4 Job Site Notices and Records.** Contractor shall prominently post at each job-site a sign informing employees that the work is subject to City's Prevailing Wage requirements and that these requirements are enforced by OLSE. Contractor shall also maintain a sign-in and sign-out sheet in a format prescribed by OLSE showing which employees are present on the job site.

**3.6.5 Payroll Records.** Contractor shall keep or cause to be kept, for a period of four years from the date of completion of the subject work, complete and accurate payroll records for all workers performing Covered Services, including without limitations time cards, trust fund reports, apprenticeship agreements, accounting ledgers, tax forms, proof of payment, and superintendent and foreperson daily logs for all trades workers performing work. Such records shall include the name, address and social security number of each worker who provided Covered Services, including apprentices, their classification, a general description of the Services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall perform any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by City and its authorized representatives.

**3.6.6 Certified Payrolls.** Contractor shall prepare certified payrolls for the period involved for all employees, including those of subcontractors, who performed Covered Services. Contractor and each subcontractor performing Covered Services shall electronically submit certified payrolls to the City and to the DIR as specified by the City and DIR. Contractor

and all subcontractors that will perform Covered Services must attend a training session on the preparation and electronic submission of certified payroll records provided by City. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

**3.6.7 Compliance Monitoring.** Covered Services performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements. Contractor agrees that (i) OLSE shall have the right to engage in random inspections of job sites and have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks, and (ii) OLSE may audit such records of Contractor and any subcontractors as it reasonably deems necessary. Failure to comply with these requirements may result in penalties and forfeitures pursuant to the California Labor Code, including Section 1776(h), as amended from time to time, and San Francisco Labor and Employment Code Article 101 through 107, as applicable.

**3.6.8 Remedies.** Should Contractor, or any subcontractor performing Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement or subcontract for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in San Francisco Labor and Employment Code and/or California Labor Code Section 1775. City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

### **3.7 Apprentices.**

**3.7.1** Contractor and its subcontractors of every tier that provide Covered Services under this Agreement (as defined in Section 1.1 above) shall, as a material term of the Agreement, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4 [commencing at Section 3070], and Section 1777.5 of the Labor Code) and Administrative Code Section 6.22(n). Contractor shall be solely responsible for securing compliance with Labor Code Section 1777.5 for all apprentice able occupations.

**3.7.2** Contractor shall include in all of its subcontracts the obligation for subcontractors to comply with the requirements of the State Apprenticeship Program.

**3.7.3** Should Contractor fail to comply with the apprenticeship requirements of Labor Code Section 1777.5, Contractor shall be subject to the penalties prescribed in Labor

Code Section 1777.7. The interpretation and enforcement of Labor Code Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.

**3.7.4** Contractor, if not signatory to a recognized apprenticeship training program under Labor Code, Chapter 4, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Contractor shall require its subcontractors who are not signatories to provide such evidence to the City as a condition precedent for qualifying for payment from the City.

**3.7.5** Contractor shall comply with all requests by the City to provide proof that Contractor and all of its subcontractors at every tier providing Covered Services are in compliance with the State Apprenticeship Program, including proof that Contractor and all of its subcontractors at any tier providing Covered Services contributed to the appropriate apprenticeship fund(s).

#### **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request and the City is not required to compensate for Services beyond those stated.

**4.2 Changes.** The SFMTA may at any time, by a written order, make changes within the general scope of this Agreement. Such change shall serve to modify this Agreement to the extent necessary to execute the change as directed. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Services under this Agreement, whether changed or not changed by the order, the SFMTA shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the Agreement accordingly. The Contractor must assert its right to an adjustment under this article within three business days from the date of receipt of the written order. Failure by Contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment. However, if the SFMTA decides that the facts justify it, the SFMTA may receive and act upon a proposal submitted at any time before final payment of the Agreement. If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, the SFMTA shall have the right to prescribe the manner of the disposition of such equipment or materials. Failure to agree to any adjustment shall be a dispute under Section 11.6, Dispute Resolution Procedure. However, nothing in this provision shall excuse the Contractor from proceeding with the Agreement as changed.

**4.3 Task Order Procedures.** Contractor shall perform the Services under Task Orders the SFMTA issues in accordance with the process described below.

**4.3.1 Task Order Requirements.** The SFMTA will define requirements for Task Orders.

**(a) Task Order Scope of Work.** The Task Order scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required SBE forms, and the Contractor Task Order proposal must be incorporated into the overhead rate (as approved in Appendix C). Separately from overhead, project management time required by a particular Task Order may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, and a task monitoring system (e.g., bi-weekly project reports or monthly status updates).

**(b) 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.

**(c) 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 a Task Order. 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 Order. In addition, the Contractor shall make good faith efforts to have all contracts signed with subcontractors within three weeks of NTP for the overall Contract. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

**(d) Transmittal of Work Product.** When requested by the SFMTA's Project Manager, and after completion of each task and subtask, the Contractor shall transmit to the SFMTA 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 shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to the SFMTA.

**(e) The SFMTA's Responsibilities Regarding Submittals.** The SFMTA will review and comment on Contractor's submittals generally within two calendar weeks of submittal. The SFMTA 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 SFMTA'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 SFMTA 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 SFMTA review comments or directives, either written or oral, to require work efforts not included in the Task Order, the Contractor shall within five business days of discovering the perceived extra work provide the SFMTA with either a written Contractor Request for Information under subsection

4.3.3 below, or a Contractor Proposal to perform additional work under the Task Order, which contains all of the information required by subsection 4.3.4 below for a Contractor Task Order Proposal.

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

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

**4.3.4 Contractor Task Order 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 direct 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, and labor to fill out required SBE forms. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one-half times the billing rate;

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

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

(iv) Proposed profit as follows: Profit will be negotiated on a task order basis and will not exceed 10% of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Contractor, Subcontractor(s) or combination thereof.

**4.3.5 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 a fixed profit to perform the work of each subtask and task and a total not-to-exceed price for the Task Order.

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

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

- The individual SBE goal set for each Task Order.
- The overall SBE participation goal established for the entire Agreement (which includes the commitments the Contractor made to each of its listed SBE subcontractors at time of proposal). See Section 10.6 (Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program) for more information on the SBE Program.

**4.3.8 Notice to Proceed.** The SFMTA will issue and send to Contractor a Task Order Form (refer to Appendix D), 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. Contractor shall use this Task Order number when submitting invoices to the SFMTA's Project Manager for payment under the Task Order.

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

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

**4.4 Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services for which it is contracted to provide through this Agreement, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. All personnel, including those assigned at the City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule of a Task Order. The SFMTA reserves the right to require the Contractor to reassign any individual on the Contractor's project team if the SFMTA is unsatisfied with that person's performance or that person fails to demonstrate the required qualifications or expertise. The SFMTA reserves the right to review and approve any replacement of team members, and the right to reject invoices submitted related to work performed by replacement team members that the SFMTA did not approve. Contractor shall advise SFMTA immediately any time one of the individuals designated as Key Personnel in Appendix B deviates from their committed role or time on a Task Order (e.g., is assigned to another project). The SFMTA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

**4.4.1 Substitution of Key Personnel.** Substitutions of Key Personnel will not be allowed except for extenuating circumstance, such as death, illness or departure from the firm, or with the City's prior approval, which approval will not be withheld as long as such substitution will not delay or otherwise harm the Project(s), which shall be determined by the SFMTA in its sole discretion. If it is necessary to substitute Key Personnel, the Contractor shall propose a replacement in writing to the SFMTA for approval.

The Contractor shall replace any Key Personnel departing from the Project(s) or departing from his/her assigned role in the Project(s) with an individual of comparable or greater experience on a non-temporary basis within 30 calendar days of the departure of the Key Personnel, unless the SFMTA grants an extension to that time limit in writing. Contractor's failure to replace Key Personnel shall be cause for the City to suspend invoice payments.

Contractor shall not be relieved of its obligation for full performance of the Scope of Services as a result of any unfilled position. The Contractor shall be held fully responsible for any inefficiencies, schedule delays or cost overruns resulting in whole or in part from any Key Personnel departing from the Project or departing from his/her assigned role in the Project before the end of the committed duration.

Contractor shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training and learning on the job.

#### **4.5 Subcontracting**

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

**4.5.2** The SFMTA's execution of this Agreement constitutes its approval of the subcontractors listed in Appendix G.

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

**4.6.1 Independent Contractor.** For the purposes of this Section 4.6, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, including its agents and employees, will not represent or hold itself/themselves out to be employees of the City at any time. Contractor shall not have employee status with the City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that the City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to the City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with Section 4.6. Should the City determine that Contractor is not performing in accordance with the requirements of Section 4.6, the 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 the City believes that an action of Contractor warrants immediate remedial action by Contractor, the City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.6.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with the 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 4.6 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 the City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless the 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 4.6.

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

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

**4.9 Liquidated Damages.** Liquidated damages may be included in individual Task Orders.

**4.10 Reserved. (Performance Bond)**

**4.11 Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance**

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

(a) Commercial General Liability Insurance with limits not less than \$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 Liability Insurance, 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) If required by the City's Risk Manager for a particular task or tasks, Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Contract and shall also provide coverage for the following risks:

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

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

(f) If required by the City's Risk Manager for a particular task or tasks, Cyber and Privacy Liability Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(g) Reserved. (Pollution Liability Insurance)

### **5.1.2 Additional Insured.**

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

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

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

**5.1.3 Waiver of Subrogation.** The Workers' Compensation Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

#### **5.1.4 Primary Insurance**

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

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

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

#### **5.1.5 Other Insurance Requirements**

(a) Thirty Days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than 10 Days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties).

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

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or

legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

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

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

## **5.2 Indemnification.**

**5.2.1** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, Contractors and experts, and related costs, and City's costs of investigating any claims against the City.

**5.2.2** In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification

provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

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

**5.2.4** Under no circumstances will City indemnify, defend, or hold harmless Contractor.

### **5.3 Indemnification and Defense Obligations For Design Professionals.**

**5.3.1 Defense Obligations.** To the fullest extent permitted by law, Contractor shall, following a tender of defense from City, assume the immediate defense of (with legal counsel subject to approval of the City), the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, losses, costs, damages, expenses and liabilities of every kind, nature, and description including, without limitation, injury to or death of any person(s) and incidental and consequential damages (collectively "Damages"), court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation (collectively "Litigation Expenses"), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"). City will reimburse Contractor for the proportionate percentage of defense costs exceeding Contractor's proportionate percentage of fault as determined by a Court of competent jurisdiction.

**5.3.2 Indemnity Obligations.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Indemnitees from and against any and all Liabilities, including but not limited to those for Damages or Litigation Expenses specified in Section 5.2.1.

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

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

**5.3.5** Under no circumstances will City indemnify, defend, or hold harmless Contractor.

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

**6.1 Liability of City.** CITY'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "CALCULATION OF TASK ORDER COMPENSATION AND CONTRACT NOT TO EXCEED AMOUNT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible in accordance with applicable law 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 the City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by 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. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

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

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

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

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

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

(a) Completing performance of any Services that the SFMTA requires Contractor to complete prior to the Termination Date

(b) Halting the performance of all Services on and after the Termination Date.

(c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

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

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

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

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

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

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

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

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

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

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

**8.1.6 Payment Obligation.** City's payment obligation under this Section 8.1, Termination for Convenience, shall survive termination of this Agreement.

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

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

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

|            |                                 |
|------------|---------------------------------|
| 3.5        | Submitting False Claims         |
| 4.7        | 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 the Services or to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten (10) days after written notice thereof from the SFMTA to Contractor or from when Contractor otherwise becomes aware of the Event of Default, provided that where a default cannot be fully cured within ten days, the Contractor will be afforded a reasonable period to cure the default so long as the initial cure is underway and diligently thereafter implemented within the initial ten day period. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, in addition to all other remedies available to the SFMTA, 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, reorganization or arrangement, any other petition in bankruptcy or for liquidation, or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

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

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

**8.2.4** Any notice of default must be sent in accordance with Article 11.

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

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

**8.4.1** Section 8.4, Rights and Duties Upon Termination or Expiration, and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

|           |                                                                |
|-----------|----------------------------------------------------------------|
| 3.3.2     | Payment Limited to Satisfactory Services and Delivery of Goods |
| 3.3.7(b)  | Grant Funded Contracts - Disallowance                          |
| 3.5       | Submitting False Claims                                        |
| Article 5 | Insurance and Indemnity                                        |
| 6.1       | Liability of City                                              |
| 6.3       | Liability for Incidental and Consequential Damages             |
| Article 7 | Payment of Taxes                                               |
| 8.1.6     | Payment Obligation                                             |
| 8.2.2     | Default Remedies                                               |

|            |                                     |
|------------|-------------------------------------|
| 9.1        | Ownership of Results                |
| 9.2        | Works for Hire                      |
| 11.6       | Dispute Resolution Procedure        |
| 11.7       | Agreement Made in California; Venue |
| 11.8       | Construction                        |
| 11.9       | Entire Agreement                    |
| 11.10      | Compliance with Laws                |
| 11.11      | Severability                        |
| Article 13 | Data and Security                   |

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

## **Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, any partially-completed Deliverables and related materials shall become the property of and will be transmitted to the City. Unless expressly authorized in writing by the SFMTA, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of the City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon its subcontractors. With City's prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of the Agreement.

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

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by

reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca](http://www.amlegal.com/codes/client/san-francisco_ca).

## **10.2 Governmental Conduct-Related Contractual Obligations.**

**10.2.1 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 SFMTA if it becomes aware of any such fact during the term of this Agreement.

**10.2.2 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.

**10.2.3 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 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 (i) 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; (ii) a candidate for that City elective office; or (iii) 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 (12) months after the date 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 ten percent (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.

## **10.3 Employment-Related Contractual Obligations.**

### **10.3.1 Small Business Enterprise (SBE) Program under Disadvantaged Business Enterprise (DBE) Program**

(a) **General.** The SFMTA is committed to a Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise Program (DBE Program) for the participation of SBEs in federally funded contracting opportunities. In addition, the Contractor must comply with all applicable federal regulations regarding SBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement.

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

(c) **Termination of SBEs.** The prime contractor may not terminate the work designated to be performed by an SBE in the memo required by Section 4.3.7, SBE Goal (or an approved substitute SBE), or any portion of that work, without prior written consent by the SFMTA CCO. A termination includes any reduction or underrun in work listed for a SBE not caused by a material change to the prime contract by the SFMTA. This requirement applies to instances that include, but are not limited to, when a prime contractor seeks to perform work originally designated for a SBE subcontractor with its own forces or those of an affiliate, a non-SBE, or with another SBE firm.

(i) The Contractor must utilize the designated SBEs to perform the work and supply the materials described in the Section 4.3.7 memo, unless the contractor obtains the SFMTA written consent under this section; and

(ii) Unless the SFMTA consent is provided under this section, the Contractor is not entitled to any payment for work or material unless it is performed or supplied by the designated SBE.

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

**10.3.2 Minimum Compensation Ordinance.** Labor and Employment Code Article 111 applies to this contract. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions

of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

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

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

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

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

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

**10.3.7 Nondiscrimination in Contracts.** Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall

incorporate by reference in all subcontracts the provisions of Articles 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

**10.3.8 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

#### **10.4 Environmental-Related Contractual Obligations.**

##### **10.4.1 Reserved. (Packaged Water Prohibition)**

**10.4.2 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.

**10.4.3 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.

##### **10.4.4 Reserved. (Sugar-Sweetened Beverage Prohibition)**

**10.5 Slavery Era Disclosure.** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

#### **10.6 Reserved. (Nonprofit Contractor Obligations)**

### **Article 11 General Provisions**

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

To City: San Francisco Municipal Transportation Agency  
Streets Division  
One South Van Ness Avenue, 3<sup>rd</sup> Floor

San Francisco, CA 94103  
Attn: Christian Kalinowski  
[Christian.Kalinowski@sfmta.com](mailto:Christian.Kalinowski@sfmta.com)

To Contractor: AECOM Technical Services, Inc.  
300 Lakeside Drive, Suite 400  
Oakland, CA 94612  
Attn: Meghan Murphy  
[meghan.murphy@aecom.com](mailto:meghan.murphy@aecom.com)

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

## **11.2 Compliance with Laws Requiring Access for People with Disabilities.**

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

**11.2.2** Contractor shall provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the information content and technology ("ICT") and/or Services provided under this Agreement.

### **11.2.3 Reserved (Web and Mobile Content Accessibility).**

**11.3 Incorporation of Recitals.** The matters recited in the Recitals section of this Agreement are a substantive portion of this Agreement and are hereby incorporated into and made part of this Agreement.

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all City records related to its formation, Contractor's performance of Services, and City's payment may be subject to the California Public Records Act, (California Government Code §7920.000 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 by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor must submit the SFMTA SBE Form 8 Declaration - Modification of Professional Services Contract and obtain prior CCO approval for any amendment, modification, supplement or change order.

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. City may elect, in its sole discretion, to participate in informal dispute resolution proceedings. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under Section 11.6.

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

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California without regard to conflict of law provisions. 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 Agreement including the Appendices, sets forth the entire agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

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

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) 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.** If the Appendices to this Agreement include any Contractor terms, Contractor agrees that in the event of any discrepancy, inconsistency, gap, ambiguity, or conflict in language between City's terms and Contractor's terms, City's terms shall take precedence. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

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

**11.15 No Third-Party Beneficiaries.** The representations, warranties and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

## **Article 12 SFMTA Specific Terms**

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

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

vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

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

## **Article 13 Data and Security**

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

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

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

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

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

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

**13.4.1 Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, 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 City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this

project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use, provided, however, that no City Data may be used by Contractor to train, modify or improve any Artificial Intelligence Systems or Models without City's prior written consent, which may be withheld or withdrawn at City's sole discretion. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

**13.4.2 Use of Generative Artificial Intelligence in Deliverables.** Contractor is prohibited from using Generative Artificial Intelligence in the development of Deliverables without City's prior written consent. Contractor represents and warrants to City that Deliverables will not be developed in a manner that conflicts with the City's rights in and to the Deliverables under Article 9, "Rights in Deliverables," or the City Data confidentiality and security requirements under Article 13, "Data and Security," of this Agreement.

**13.4.3 Disposition of City Data.** Except as otherwise provided for in this Agreement, upon the City's request, termination or expiration of this Agreement, or the expiration of any required document retention period or litigation hold, Contractor shall promptly, but in no event later than 30 Days, return all City Data given to or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall within 10 business days, securely dispose, clear, purge, and/or physically destroy, all copies of all City Data from its servers, files, hosted environments used in performance of this Agreement (including subcontractors' environments), work stations used to process or produce the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such secure disposal occurred within five business days of the disposal. 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 most current industry standard.

**13.5 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City. Notwithstanding any other provision of this agreement, Contractor shall retain ownership of all pre-existing intellectual property used in this agreement.

### **13.6 Loss or Unauthorized Access to City's Data; Security Breach Notification.**

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

**13.7 Cybersecurity Risk Assessment.** If a Cybersecurity Risk Assessment ("CRA") was required before entering the Agreement, Contractor must complete an annual CRA to demonstrate that it has maintained the data privacy and information security program required for City contractors. If Contractor does not satisfactorily complete an annual CRA, the City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement or exercise any of its other remedies hereunder. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

## **Article 14 Appendices**

**14.1 Appendices.** The following appendices ("Appendices" in the plural and each an "Appendix" in the singular) are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- A: Scope of Services
- B: Direct Hourly Labor Rates
- C: Overhead Rates
- D: Task Order Request Form
- E: FTA Requirements
- F: Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program for Professional and Technical Services Requirements for Architects, Engineers, Planners, Environmental Scientists and Other Professional Services Contracts
- G: Directory of Subcontractors

## **Article 15 MacBride and Signature**

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

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

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

|                                                          |                                                                                                                                                      |
|----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CITY</b>                                              | <b>CONTRACTOR</b>                                                                                                                                    |
| <b>San Francisco<br/>Municipal Transportation Agency</b> | <b>AECOM Technical Services, Inc.</b>                                                                                                                |
| <hr/>                                                    | <hr/>                                                                                                                                                |
| Julie Kirschbaum<br>Director of Transportation           | <b>Veronica Siranosian, AICP<br/>Senior Vice President, Transit &amp; Rail<br/>Division Lead</b>                                                     |
| Authorized By:                                           |                                                                                                                                                      |
| Municipal Transportation Agency Board of Directors       |                                                                                                                                                      |
| Resolution No: _____                                     | <u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u>                                                                         |
| Adopted: _____                                           | By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements. |
| Attest: _____<br>Secretary, to the Board                 |                                                                                                                                                      |
| Approved as to Form:                                     |                                                                                                                                                      |
| David Chiu<br>City Attorney                              |                                                                                                                                                      |
| By: _____<br>David F. Innis<br>Deputy City Attorney      | City Supplier Number: <b>0000003425</b>                                                                                                              |

## **Appendix A Scope of Services**

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

Contractor agrees to provide a broad range of specialized engineering services and staff to complete task orders issued by the SFMTA, either by direct assignment of its own personnel or through Subconsultants, including, but not limited to, initial planning and programming, specialized studies, design support, construction support, construction management, special inspection and material testing, start-up and commissioning, and project closeout. Staffing expectations will be provided on a task order basis but may be up to full-time to provide support for the SFMTA's project delivery division, which manages facilities, transit optimization, fixed trackway, and major corridors projects. The scope of work is categorized below. Note that the work may not be specific to its category and is not limited to the following:

#### **A. Planning**

1. Preparing and reviewing alternative analyses and developing overall design approaches.
2. Performing field surveys using licensed surveyors, including but not limited to topographic/control mapping, track/rail survey (inside and outside of tunnels), monument referencing, utility surveys, LiDAR, and ground penetrating radar (GPR).
3. Identifying and coordinating with utility providers to obtain existing utility information, assessing potential conflicts, facilitating relocations or design adjustments, and coordinating with utility owners to resolve utility conflicts with proposed improvements by relocating conflicting utilities.
4. Performing underground utility locating and potholing to identify as-built utilities, producing utility composite drawings, redesigning conflicts, acquiring additional real estate, and/or work-around.
5. Developing project management plans in accordance with FTA requirements.
6. Providing various FTA reports, as requested, including risk registers and financial updates.
7. Providing quality assurance oversight, audits, plans, training, and assistance per FTA requirements.

#### **B. Design**

1. Providing engineering design documents (drawings, specifications, calculations) as the Designer of Record for transit optimization, facilities, fixed guideway, and major corridor projects, including but not limited to the following disciplines:
  - a. Architectural & Civil – architecture, landscape architecture, civil, structural, geotechnical, tunnel;
  - b. Mechanical, Electrical & Plumbing (MEP) – mechanical, electrical, plumbing, fire protection, photometrics;

- c. Rail Systems & Transit Infrastructure – track, special track, signal, overhead contact system, electrification and power simulation studies.
2. Preparing or reviewing design and construction schedules, construction sequencing plans, and cost estimates (including bid items and descriptions), and performing schedule and phasing analyses to recommend project timelines and phasing strategies.
3. Performing or reviewing site investigations and functional analyses.
4. Performing geotechnical investigations and reports, including soil borings, sampling, coring, geophysical survey, laboratory testing, and recommendations on shallow and deep foundation design, seismic design criteria, total and differential settlement estimates, liquefaction evaluation, earthwork and site grading recommendations, and flexible and rigid pavement design criteria.
5. Identifying construction issues and constraints. Preparing and reviewing design packages (plans and specifications), including integration of all technical and contractual sections into one set of plans and specifications.
6. Conducting peer review to evaluate and address critical safety, technical, constructability, and operational issues, including assumptions, conclusions, and recommendations that are made by SFMTA staff or other consultants. Preparing peer review reports that summarize findings, conclusions, and recommendations.
7. Providing technical administrative support (e.g., file drawings, meeting minutes, and document control) using the SFMTA's existing document control system.
8. Incorporating the SFMTA's Quality Assurance/Quality Control (QA/QC) program into the design and construction packages.
9. Identifying special testing requirements, preparation testing, and start-up plans.
10. Providing engineering drafting support using AutoCAD Civil 3D, such as design and as-built drawings for various projects.
11. Performing preliminary and system hazard analyses, failure modes and effects analyses, single-point-of-failure analyses, hazard level classification, and safety certification of systems.
12. Providing systems engineering, including central control and communications system analysis, strategic analysis of the SFMTA's human and automated systems, systems integration, safety processes, configuration management, and related work.
13. Updating and standardizing project specifications to align with CSI Master Format standards to ensure consistency across all city departments.

#### C. Contracting

1. Assist in preparing procurement contracts for track, mechanical and electrical components, operating equipment, and long-lead items. The task may include performing product research, specifying products, and performing alternative analyses.
2. Conducting bid analyses by reviewing and evaluating project bids and/or proposals for completeness, compliance with project specifications, and cost reasonableness. This process will result in recommendations for contract award.

#### D. Construction

1. Providing design support during construction as supplementary staff to the Designer of Record or as the Designer of Record.
2. Providing engineering support during construction, including submittal and RFI review and response; preparing, reviewing, and negotiating change orders and proposed change orders; analyzing cost proposals and preparing cost estimates; evaluating schedules, recovery schedules, and fragnets; and providing other technical support.
3. Providing construction field engineering support (documentation and resolution of engineering issues including field investigations and evaluation of field conditions).
4. Providing construction management staff, such as a Resident Engineer (RE) and Assistant Resident Engineer (ARE) to oversee construction activities, ensure contract compliance, and manage day-to-day field operations. Staff will assist with documentation, inspections, and coordination among project stakeholders.
5. Providing day and night construction inspection support, including weekends.
6. Providing construction management support (e.g. claims analysis and negotiation plans, risk analysis, time impact analysis, and dispute review meeting documentation, such as position papers and backup documentation). Consultant is not expected to directly participate in claims negotiations for projects in construction that are primarily managed by the SFMTA.
7. Performing cost and schedule analyses of contracts, change orders, task orders, and contract modifications per FTA requirements; change order estimating and negotiation; schedule and delay analysis; constructability review; forensic cost and accounting analyses; and dispute analysis and review.
8. Performing special inspections as required by the City, including welding inspection with non-destructive testing (NDT), such as ultrasonic, magnetic particle, dye penetration, radiographic, and hardness testing, structural steel and high strength bolt (HSB) inspection, concrete inspection, grout inspection, soil testing, and fireproofing review. Testing work shall be conducted by certified inspectors and/or labs.
9. Performing laboratory material testing as required by the City, including soil, aggregate, steel, HSB, concrete cylinder and beams, grout cubes, hot mix asphalt, and fireproofing testing.
10. Providing Stormwater Pollution Prevention Plan (SWPPP) oversight, including regular inspections, reporting, and coordination with the contractor. This oversight work shall be conducted by a Qualified SWPPP Practitioner (QSP)/Qualified SWPPP Developer (QSD) certified staff. Frequency of inspection/reporting will be provided on a task order basis.
11. Performing system start-up and commissioning, including integration and pre-revenue “dry-run” testing, developing testing procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses. Performing this work may require coordination with SFMTA Operations and Maintenance teams.

12. Coordinating with contractors to select Dispute Review Board and administering resolution processes.
13. Providing construction safety consulting services, including:
  - a. Reviewing contractor's safety record, providing recommendations on the quality of the Contractor's safety documents, and recommending scores of Occupational Safety and Health Administration (OSHA) serious, repeat, and willful violation citations.
  - b. Evaluating contractor-submitted site-specific Health and Safety Plans (HASP) and Job Hazard Analysis (JHA) forms for SFMTA projects.
  - c. Performing general safety services, such as conducting site monitoring field visits, preparing inspection reports, and documenting inspection findings.

E. Track/Rail

1. Predicting, analyzing, preventing, and mitigating noise and vibration from transit operations and equipment, and designing and monitoring mitigation measures.
2. Performing annual ultrasonic rail testing per SFMTA's Standard Operating Procedure (SOP) entitled "Track Inspection and Maintenance" (see Appendix H) to identify internal rail defects.
3. Performing tunnel inspections per SFMTA's SOP entitled "Tunnel Structural Inspection Procedures" (see Appendix I), including reporting findings and recommending tunnel repairs and issue mitigation strategies.
4. Providing safety certification oversight and required documentation to obtain System Safety and Security Program per CPUC General Order (GO) 164-D, which requires transit agencies who are building and operating rail fixed guideway systems to establish a System Safety and Security Program. The scope of work may include the following:
  - a. Researching and drafting safety standards.
  - b. Reviewing the contractor's system safety programs and hazard analysis.
  - c. Developing Safety and Security Certification Plans.
  - d. Leading or participating in the Safety and Security Certification Review Committee (SSCRC).
  - e. Maintaining the Audit Conformance Checklists.
  - f. Reviewing the contractor's safety requirements.
  - g. Auditing implementation of safety requirements and hazard resolution.

F. Environmental

1. Assisting in the preparation of California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) documentation, including technical studies, environmental assessments, and public outreach.
2. Conducting environmental sampling and material testing, such as asbestos or lead paint, and preparing testing reports.
3. Conducting environmental borings for subsurface soil and groundwater samples, including permitting, drilling, sample collection, logging, and borehole closure.
4. Assisting in preparing and submitting Maher Ordinance documentation and related testing.

5. Preparing Phase 1 and, if necessary, Phase 2 Environmental Site Assessments (ESAs), including site inspections, historical research, sampling, laboratory analysis, and reports that document the findings and recommendations.

#### **G. Project Management**

1. Providing qualified project managers to serve as assistant project managers. The scope of work may include the following:
  - a. Monitoring and reviewing project scope to ensure project alignment with the original scope.
  - b. Preparing task order schedules with deliverable milestones.
  - c. Overseeing design and construction activities and coordinating multi-disciplinary technical staff across organization boundaries.
  - d. Reviewing change orders with SFMTA teams and developing implementation recommendations.
  - e. Monitoring and inspecting contractor work to ensure compliance with contract plans, specifications, and schedules. If the work is found not to comply, the consultant shall notify the SFMTA and assist in resolving issues with the contractors.
  - f. Preparing and monitoring the project budget and schedule and assist with obtaining funding, as necessary.
  - g. Preparing monthly project reports and schedule updates.
  - h. Assisting with or preparing agency project reports, management presentations on project status, and presentations to various outside agencies related to project status.
2. Providing advice to the SFMTA on alternative delivery projects as an Owner-Advisor or Owner Representative. Work may include:
  - a. Validating project scope, budget, and schedule through independent analysis and stakeholder coordination to ensure alignment with SFMTA's project goals and performance requirements.
  - b. Providing ongoing oversight of design and construction activities, including cost and schedule monitoring, change management, and construction observation to ensure projects remain on track and meet quality standards.
  - c. Supporting final inspections, system commissioning, staff training, and document turnover to ensure smooth transition to operations and project readiness for use.

## **2. 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.

## **3. Department Liaison**

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be Christian Kalinowski.

**4. Services Provided by Attorneys**

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

**Appendix B**  
**Direct Hourly Labor Rates by Position or Class for Contractor and all Subcontractors**

| <b>Firm</b> | <b>Employee Name<sup>3</sup></b> | <b>Position/Classification</b>                                                               | <b>Direct Hourly Rate</b> |
|-------------|----------------------------------|----------------------------------------------------------------------------------------------|---------------------------|
| AECOM       | Aaron Carter                     | Environmental Planning Sr Manager/Environmental Support                                      | \$105.05                  |
| AECOM       | Abhijeet Bhoi                    | AVP, Civil Sr Manager/General Design Services, Design & Engineering Support                  | \$136.19                  |
| AECOM       | Alan Boone                       | AVP, Engineering/Track                                                                       | \$113.47                  |
| AECOM       | Amer Bata (KP)                   | Deputy Department Manager/Quality Manager                                                    | \$153.18                  |
| AECOM       | Brian Guan                       | Associate, Fire Protection Engineer/Fire Protection Support                                  | \$53.45                   |
| AECOM       | Chandra Miller                   | Senior Architectural Historian/Historic Architecture                                         | \$62.50                   |
| AECOM       | Chris Berilla (KP)               | Civil Manager/Civil                                                                          | \$106.42                  |
| AECOM       | Fabiola Macias-Wallis            | Project Engineer - Structural Engineering Department/Safety Consulting, Safety Certification | \$83.79                   |
| AECOM       | Fernando Dos Santos              | Construction Engineering V/Construction Management                                           | \$103.25                  |
| AECOM       | Gavin Poindexter                 | AVP, New Starts and Small Starts; Federal Funding/FTA Reporting                              | \$102.90                  |
| AECOM       | George Strnad                    | Project Landscape Architect/Visual Impact Assessment                                         | \$87.72                   |
| AECOM       | Giovanni Tomei                   | Civil Engineering/Civil                                                                      | \$55.82                   |
| AECOM       | Gourav Patidar                   | Construction Engineering/Field Support <sup>1</sup>                                          | \$45.27                   |
| AECOM       | Hazzaa El-Mahmoud                | Construction Project Manager VI/Field Support <sup>1</sup>                                   | \$100.70                  |
| AECOM       | Jack Waldron (KP)                | SVP, Design-Build Business Line - Infrastructure & Environment/G. Project Management         | \$172.54                  |
| AECOM       | Jack Wang (KP)                   | Construction Management Transit Lead/C. Contracting, PMP Development                         | \$108.94                  |
| AECOM       | Jasmin Mejia                     | Environment Market Leader -Surface Transportation/Environmental Support, CEQA\NEPA           | \$98.56                   |
| AECOM       | Jay Rehor                        | Senior Archaeologist/Archeology-Cultural Resources                                           | \$71.78                   |

| <b>Firm</b> | <b>Employee Name<sup>3</sup></b> | <b>Position/Classification</b>                                            | <b>Direct Hourly Rate</b> |
|-------------|----------------------------------|---------------------------------------------------------------------------|---------------------------|
| AECOM       | Jeff Finn                        | Construction Engineering VI/Construction Management                       | \$117.50                  |
| AECOM       | Joy Villafranca (KP)             | Project Manager V/B. Design                                               | \$121.21                  |
| AECOM       | Kshitij Saxena (KP)              | Systems Design Manager/Systems                                            | \$110.49                  |
| AECOM       | Laura Dito                       | Senior Environmental Planner/F. Environmental                             | \$72.12                   |
| AECOM       | Lena Ng (KP)                     | Construction Project Manager/D. Construction                              | \$104.17                  |
| AECOM       | Lynn McIntyre                    | Project Manager -Environmental Planning & Permitting/CEQA\NEPA            | \$99.37                   |
| AECOM       | Marco Baez                       | Civil Engineering V/General Design Services, Design & Engineering Support | \$91.28                   |
| AECOM       | Mark Aikawa                      | VP Northern California Surface Transportation Leader/Core PM Support      | \$164.91                  |
| AECOM       | Meghan Murphy (KP)               | Transit & Rail Technical Director/Project Manager                         | \$129.09                  |
| AECOM       | Michael Voudouris (KP)           | Senior Inspector/Construction Safety Manager <sup>1</sup>                 | \$90.00                   |
| AECOM       | Mike Wongkaew (KP)               | SVP, Americas Tunnel Practice Leader/Tunnel                               | \$191.94                  |
| AECOM       | Nithya Palani                    | Environmental Scientist III/Environmental Support                         | \$55.18                   |
| AECOM       | Paola Pena                       | Air Quality Scientist IV/Air Quality                                      | \$57.13                   |
| AECOM       | Peter DeStefano                  | Project Manager V/General Design Services, Design & Engineering Support   | \$119.28                  |
| AECOM       | Ramesh Sathiamurthy (KP)         | AVP, Project Manager VI/A. Planning, QA Oversight                         | \$149.93                  |
| AECOM       | Riana Wheeler                    | Civil Engineering/Civil                                                   | \$58.69                   |
| AECOM       | Richard No (KP)                  | Senior Project Controls Manager/Lead Scheduler                            | \$134.15                  |
| AECOM       | Stephanie Osby                   | Environmental Planner IV/CEQA\NEPA                                        | \$61.89                   |
| AECOM       | Veronica Siranosian              | Director of Growth & Transit & Rail Division Lead/Project Executive       | \$162.48                  |
| AECOM       | Wanda Farmer                     | Project Manager II/Hazardous Materials                                    | \$58.91                   |
| AECOM       | Waqar Ahmad                      | Construction Engineering V/Field Support <sup>1</sup>                     | \$88.15                   |
| AECOM       | Ziad Rizk                        | AVP, Deputy Department Manager/Construction Management                    | \$146.39                  |
| AGS, Inc.   | James Herrenbruck                | Construction Manager                                                      | \$103.00                  |
| AGS, Inc.   | Anthony Simas                    | Assistant Resident Engineer                                               | \$82.40                   |

| <b>Firm</b>       | <b>Employee Name<sup>3</sup></b> | <b>Position/Classification</b>                                | <b>Direct Hourly Rate</b> |
|-------------------|----------------------------------|---------------------------------------------------------------|---------------------------|
| AGS, Inc.         | Bahram Khamenehpour              | Senior Principal Engineer                                     | \$129.00                  |
| AGS, Inc.         | Chloe Gednov                     | Project Engineer/Geologist                                    | \$72.00                   |
| AGS, Inc.         | James Severson                   | Resident Engineer                                             | \$95.00                   |
| AGS, Inc.         | JunYu Lei                        | Senior Staff Engineer/Geologist                               | \$56.25                   |
| AGS, Inc.         | Keyvan Fotoohi                   | Principal Geotechnical Engineer                               | \$104.00                  |
| AGS, Inc.         | Mary Jalbert                     | Staff Engineer/Geologist                                      | \$48.00                   |
| AGS, Inc.         | Steve Tsang                      | Senior Geotechnical Engineer                                  | \$102.00                  |
| BESS Testlab Inc. | Alejandro Rodriguez              | Labor Foreman Group 1 <sup>1</sup>                            | \$44.72                   |
| BESS Testlab Inc. | Alejandro Rodriguez (OT)         | Labor Foreman Group 1 <sup>1</sup>                            | \$67.08                   |
| BESS Testlab Inc. | Cesar Rodriguez                  | Journeyman Labor/Group 1 <sup>1</sup>                         | \$40.65                   |
| BESS Testlab Inc. | Cesar Rodriguez (OT)             | Journeyman Labor/Group 1 <sup>1</sup>                         | \$60.97                   |
| BESS Testlab Inc. | Francisco Rodriguez              | Journeyman Labor/Group 1 <sup>1</sup>                         | \$40.65                   |
| BESS Testlab Inc. | Francisco Rodriguez (OT)         | Journeyman Labor/Group 1 <sup>1</sup>                         | \$60.97                   |
| BESS Testlab Inc. | Juan Jardon                      | Journeyman Labor/Group 1 <sup>1</sup>                         | \$40.65                   |
| BESS Testlab Inc. | Juan Jardon (OT)                 | Journeyman Labor/Group 1 <sup>1</sup>                         | \$60.98                   |
| BESS Testlab Inc. | Ramon Gomez                      | Journeyman Labor/Group 1 <sup>1</sup>                         | \$40.65                   |
| BESS Testlab Inc. | Ramon Gomez (OT)                 | Journeyman Labor/Group 1 <sup>1</sup>                         | \$60.98                   |
| BESS Testlab Inc. | Spencer Ama                      | Operator/Group 7 <sup>1</sup>                                 | \$62.25                   |
| BESS Testlab Inc. | Spencer Ama (OT)                 | Operator/Group 7 <sup>1</sup>                                 | \$93.38                   |
| BESS Testlab Inc. | Thomas O Brien                   | Foreman Labor/Group 1 <sup>1</sup>                            | \$44.72                   |
| BESS Testlab Inc. | Thomas O Brien (OT)              | Foreman Labor/Group 1 <sup>1</sup>                            | \$67.08                   |
| BESS Testlab Inc. | N/A                              | Vacuum Excavator – Hydro <sup>2</sup>                         | \$285.00/hour             |
| BESS Testlab Inc. | N/A                              | Backfill Material will be per FAR regulation <sup>2</sup>     | \$8,280.00/each           |
| BESS Testlab Inc. | N/A                              | Surface Restoration Material per FAR regulations <sup>2</sup> | \$5,520.00/each           |
| BESS Testlab Inc. | N/A                              | Hot-patch Equipment (Dump Truck & Trailer) <sup>2</sup>       | \$245.00/each             |
| BESS Testlab Inc. | N/A                              | Traffic Control Arrow Board Truck w/Cones ect. <sup>2</sup>   | \$76.00/hour              |
| BESS Testlab Inc. | N/A                              | Traffic Control Plans (allowance) <sup>2</sup>                | \$420.00/each             |
| BESS Testlab Inc. | N/A                              | Dump Fees per FAR Regulations <sup>2</sup>                    | \$1,200.00/each           |
| BESS Testlab Inc. | N/A                              | Surface Removal - Disposal Fee <sup>2</sup>                   | \$300.00/each             |
| BESS Testlab Inc. | N/A                              | Report <sup>2</sup>                                           | \$125.00/each             |
| BESS Testlab Inc. | N/A                              | Utility Locator w/ GPR & EM equipment with Truck <sup>2</sup> | \$38.00/hour              |
| BESS Testlab Inc. | N/A                              | 1-Person Utility Truck Mobilization Rate <sup>2</sup>         | \$125.00/hour             |

| <b>Firm</b>                   | <b>Employee Name<sup>3</sup></b> | <b>Position/Classification</b>                             | <b>Direct Hourly Rate</b> |
|-------------------------------|----------------------------------|------------------------------------------------------------|---------------------------|
| BESS Testlab Inc.             | N/A                              | Air/hydro-vac Utility Truck Mobilization Rate <sup>2</sup> | \$315.00/hour             |
| Inspection Services Inc       | Andrew Rumbaugh                  | Group #2 Inspector <sup>1</sup>                            | \$61.39                   |
| Inspection Services Inc       | Archie Richardson                | Group #2 Inspector <sup>1</sup>                            | \$61.39                   |
| Merrill Morris Partners, Inc. | Cathy Merrill                    | Principal Landscape Architect                              | \$90.00                   |
| Merrill Morris Partners, Inc. | John Potis                       | Sr. Associate Landscape Architect III                      | \$58.00                   |
| Parsons Corporation           | Sravani Rao Tadanki              | Senior Engineering Manager                                 | \$108.72                  |
| Parsons Corporation           | Steve Ashburner                  | Principal Project Manager                                  | \$122.18                  |
| Parsons Corporation           | Sukhwinder Khaira                | Principal Project Systems Engineer/Start-up Commissioning  | \$88.27                   |
| Parsons Corporation           | Theodore Woods                   | Senior Program Director/Start-up Commissioning             | \$144.90                  |
| Robin Chiang & Company        | Anshul Gupta                     | Architect/Designer                                         | \$62.09                   |
| Robin Chiang & Company        | David Fung (KP)                  | Senior PM/Architecture                                     | \$102.77                  |
| Robin Chiang & Company        | Eric Petrie                      | Intermediate Designer                                      | \$64.38                   |
| Robin Chiang & Company        | Maclean Carr                     | Sr. Architect/Planner                                      | \$93.06                   |
| Robin Chiang & Company        | Peggy Chiang                     | Project Administration                                     | \$82.72                   |
| Robin Chiang & Company        | Robin Chiang                     | Principal Architect/Architecture                           | \$114.85                  |
| Robin Chiang & Company        | Roumel Butiong                   | Senior PM/Designer                                         | \$84.82                   |
| Robin Chiang & Company        | Victor Payes                     | Designer                                                   | \$50.43                   |
| Saylor Consulting Group       | Alex Henderson                   | Senior Electrical Estimator                                | \$85.50                   |
| Saylor Consulting Group       | Andrew Chalabardo                | Senior Estimator                                           | \$96.15                   |
| Saylor Consulting Group       | Drew Erickson (KP)               | Constructability Review Specialist/Lead Transit Estimator  | \$135.00                  |
| Saylor Consulting Group       | Fernando Rivera                  | Senior Civil Estimator                                     | \$92.70                   |
| Saylor Consulting Group       | Hamed Jafarzadeh                 | Senior Scheduler                                           | \$110.00                  |
| Saylor Consulting Group       | Tim Coyle                        | Senior Mechanical Estimator                                | \$85.50                   |

| <b>Firm</b>                          | <b>Employee Name<sup>3</sup></b> | <b>Position/Classification</b>                                                | <b>Direct Hourly Rate</b> |
|--------------------------------------|----------------------------------|-------------------------------------------------------------------------------|---------------------------|
| SCA Environmental, Inc.              | Christina Codemo                 | Principal, Sr. Consultant/Environmental Sampling, Testing Support             | \$115.00                  |
| SCA Environmental, Inc.              | Dan Leung                        | Senior Engineer (PE)/Certified Industrial Hygienist (CIH)                     | \$115.00                  |
| SCA Environmental, Inc.              | Hifza Ali                        | Research Assistant/Project Assistant                                          | \$55.00                   |
| SCA Environmental, Inc.              | Jack Belton                      | CalOSHA/CDPH Certified Personnel                                              | \$56.50                   |
| SCA Environmental, Inc.              | Jesus Ramirez                    | Industrial Hygienist                                                          | \$65.00                   |
| SCA Environmental, Inc.              | Jett Simons                      | CalOSHA/CDPH Certified Personnel                                              | \$56.50                   |
| SCA Environmental, Inc.              | Ryan Kau                         | Sr. Project Manager/Sr. Engineer                                              | \$80.00                   |
| SCA Environmental, Inc.              | Tucker Kalman                    | Principal/Sr. Consultant                                                      | \$115.00                  |
| SCA Environmental, Inc.              | Vancy Roley                      | Research Assistant/Project Assistant                                          | \$55.00                   |
| Slate Geotechnical Consultants, Inc. | Courtney Johnson                 | Principal Engineer/Geotechnical, Geology Support                              | \$112.14                  |
| Slate Geotechnical Consultants, Inc. | Debra Murphy (KP)                | Principal Engineer/Geotechnical                                               | \$112.14                  |
| Slate Geotechnical Consultants, Inc. | Katrina Watkins                  | Senior Engineer/Geotechnical Support                                          | \$76.00                   |
| STV Incorporated                     | Anna Harvey (KP)                 | Deputy Project Manager/Deputy PM                                              | \$132.22                  |
| STV Incorporated                     | Siu Ting Mak (KP)                | Structural Discipline Lead/Structures                                         | \$99.58                   |
| Transit Systems Engineering, Inc.    | Brendan Doss                     | Rail Systems-System Safety & Security Mgr./System Safety and Security Support | \$83.01                   |
| Transit Systems Engineering, Inc.    | Carl Buck                        | Rail Systems-Central Control Manager/Central Control Systems Support          | \$115.58                  |
| Transit Systems Engineering, Inc.    | Dorian Rufus                     | Rail Systems-Sr. Signal Engineer/Signals Support                              | \$79.46                   |
| Transit Systems Engineering, Inc.    | Ferda Evans                      | Rail Systems-Systems Integration Mgr./Systems Integration Support             | \$103.43                  |
| Transit Systems Engineering, Inc.    | Kevin Nishinaga                  | Rail Systems-Systems Engineer                                                 | \$76.45                   |
| Transit Systems Engineering, Inc.    | Tri Le                           | Rail Systems-Sr. Communications Engineer/Communications Support               | \$84.01                   |
| VST Engineering Inc.                 | Jorge Solorio-Ayala (KP)         | Track Engineer/Track                                                          | \$87.67                   |

| <b>Firm</b>               | <b>Employee Name<sup>3</sup></b> | <b>Position/Classification</b>                   | <b>Direct Hourly Rate</b> |
|---------------------------|----------------------------------|--------------------------------------------------|---------------------------|
| VST Engineering Inc.      | Ruben Robles (KP)                | Electrical Engineer/E. Track/Rail                | \$86.71                   |
| VST Engineering Inc.      | Yuma Doi                         | Track Engineer/Track                             | \$74.52                   |
| Wilson Ihrig/RWDI USA LLC | Charysse Redwood                 | Acoustician                                      | \$41.20                   |
| Wilson Ihrig/RWDI USA LLC | Derek L. Watry                   | Technical Director/Noise & Vibration             | \$91.05                   |
| Wilson Ihrig/RWDI USA LLC | Fletcher Pratt                   | Acoustician                                      | \$48.41                   |
| Wilson Ihrig/RWDI USA LLC | Gary Glickman                    | Technical Director/Noise & Vibration             | \$91.05                   |
| Wilson Ihrig/RWDI USA LLC | Lauren Garrett                   | Project Coordinator                              | \$32.21                   |
| Wilson Ihrig/RWDI USA LLC | Sarah Kaddatz                    | Senior Acoustician                               | \$63.24                   |
| YEI Engineers, Inc.       | Brandon Yee (KP)                 | Project Manager, Project Electrical Engineer/MEP | \$90.61                   |
| YEI Engineers, Inc.       | Bryan Hayes                      | Senior Mechanical Engineer/Mechanical            | \$76.92                   |
| YEI Engineers, Inc.       | Hubert Hidalgo                   | Lead Plumbing Engineer/Plumbing Support          | \$96.27                   |
| YEI Engineers, Inc.       | Jennifer Huynh                   | Lead Electrical Engineer/Electrical Support      | \$85.95                   |

**Notes:**

- (1) Position may be subject to Department of Industrial Relations (DIR) prevailing wage requirements. Certified payroll must be submitted in LCPTTracker.
- (2) Fixed lump sum rate, which is subject to refinement based on the negotiated scope of work under future task orders. Additional direct labor, overhead rates, and profit not applicable.
- (3) Employees designated KP are subject to the Key Personnel requirements of Section 4.4.

**Appendix C**  
**Schedule of Overhead Rates for Contractor and all Subcontractors**

| <b>Firm</b>                          | <b>Overhead Rate (%)</b> |
|--------------------------------------|--------------------------|
| AECOM Technical Services Inc         | 103.86% (F) 119.05%(H)   |
| AGS, Inc.                            | 168.35%                  |
| BESS Testlab Inc.                    | 166.04%                  |
| Inspection Services Inc.             | 159.36%                  |
| Merrill Morris Partners, Inc.        | 207.08%                  |
| Parsons Corporation                  | 88.14% (F) 118.14% (H)   |
| Robin Chiang & Company               | 160.42%                  |
| Saylor Consulting Group              | 105.00%                  |
| SCA Environmental, Inc.              | 154.20%                  |
| Slate Geotechnical Consultants, Inc. | 196.15%                  |
| STV Incorporated                     | 139.07%                  |
| Transit Systems Engineering, Inc.    | 153.70%                  |
| VST Engineering Inc.                 | 138.84%                  |
| Wilson Ihrig/RWDI USA LLC            | 193.00%                  |
| YEI Engineers, Inc.                  | 200.40%                  |

## Appendix D

### TASK ORDER FORM

#### SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Contract Title: As-Needed Specialized Engineering Services  
Project Title: \_\_\_\_\_

Contract No.: CS-  
Project No.: M000.0

TASK ORDER FORM-TASK ORDER NO. ### ##

|                                                                                                                                                                        |              |                                             |             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------------------------|-------------|
| Task Title: _____ Services                                                                                                                                             |              | Date Initiated: [RFP Date]                  |             |
| <input type="checkbox"/> New Task Order                                                                                                                                |              | <input type="checkbox"/> Revised Task Order |             |
| <b>Work to be Performed:</b><br><br>Provide [type] services for the [project] as described in the attached Consultant's final proposal dated [date of final proposal]. |              |                                             |             |
| <b>Schedule:</b><br><div style="text-align: right;">Duration: <u>(#)</u> [Months/Years] ( <u>   </u> Days)</div>                                                       |              |                                             |             |
| Total Agreed Amount: \$                                                                                                                                                |              | Liquidated Damages (if applicable): \$      |             |
| <b>Funding Information:</b>                                                                                                                                            |              |                                             |             |
| Project ID                                                                                                                                                             | Authority ID | Dept ID                                     | Activity ID |
|                                                                                                                                                                        |              |                                             |             |
| <b>Deliverables</b>                                                                                                                                                    |              |                                             |             |
| Description                                                                                                                                                            |              | Date Required                               |             |
| 1. Refer to Consultant's final proposal dated _____.                                                                                                                   |              | TBD                                         |             |
| <b>APPROVALS</b>                                                                                                                                                       |              |                                             |             |
| Submitted _____                                                                                                                                                        |              | Date _____                                  |             |
| Project Manager                                                                                                                                                        |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Engineering                                                                                                                                                            |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Program Delivery & Construction Management                                                                                                                             |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Planning and Project Delivery                                                                                                                                          |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Section Lead, Contract Administration                                                                                                                                  |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Manager, Contract Administration                                                                                                                                       |              |                                             |             |
| Approved _____                                                                                                                                                         |              | Date _____                                  |             |
| Director of Contracts and Procurement                                                                                                                                  |              |                                             |             |

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

**Contract Title:** As-Needed Specialized Engineering Services  
**Project Title:** \_\_\_\_\_

**Contract No.:** CS-  
**Project No.:** M000.0

**TASK ORDER FORM-TASK ORDER NO. ###-##**

**Proposed Staff and Budget:**

| Task(s)                                  |  | Fixed Price<br>(including Profit) |   |
|------------------------------------------|--|-----------------------------------|---|
| Task/Sub-Task XX - [Task/Sub-Task title] |  | \$                                | - |
| Task/Sub-Task XX - [Task/Sub-Task title] |  | \$                                | - |
| <b>Total Lump Sum Cost</b>               |  | \$                                | - |

  

| Name                                          | Hours | Direct Hourly<br>Rate | Cost    |
|-----------------------------------------------|-------|-----------------------|---------|
| <b>Prime: [Name of Prime]</b>                 |       |                       |         |
| [name], [classification]                      |       |                       | \$ -    |
| [name], [classification]                      |       |                       | \$ -    |
| [name], [classification]                      |       |                       | \$ -    |
| <b>Total</b>                                  |       |                       | \$ -    |
| <b>Overhead</b>                               | %     |                       | #VALUE! |
|                                               |       |                       |         |
| <b>Subconsultant: [Name of Subconsultant]</b> |       |                       |         |
| [name], [classification]                      |       |                       | \$ -    |
| [name], [classification]                      |       |                       | \$ -    |
| <b>Total</b>                                  |       |                       | \$ -    |
| <b>Overhead</b>                               | %     |                       | #VALUE! |
|                                               |       |                       |         |
| <b>Total Direct Labor</b>                     |       |                       | \$ -    |
| <b>Total Overhead</b>                         |       |                       | #VALUE! |
| <b>Fixed Fee/Profit</b>                       |       |                       |         |
| <b>Other Direct Costs (ODC)</b>               |       |                       |         |
|                                               |       |                       |         |
| <b>Total Amount of Task Order</b>             |       |                       | #VALUE! |

**Payment Method:**

[e.g. To be paid as lump sum after acceptance of all Deliverables for each task.]

**Retention:** \_\_\_\_% (if applicable)

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Contract Title: As-Needed Specialized Engineering Services  
Project Title: \_\_\_\_\_

Contract No.: CS-  
Project No.: M000.0

TASK ORDER FORM-TASK ORDER NO. ### ##

|                                                             |             |
|-------------------------------------------------------------|-------------|
| <b>Approved by [Name of Prime] (Consultant):</b>            |             |
|                                                             |             |
| <b>Signature</b><br>[name]<br><b>Project Manager</b>        | <b>Date</b> |
| <b>Signature</b><br>[name]<br>[Title i.e. President/VP/CEO] | <b>Date</b> |

## Appendix E

### FTA REQUIREMENTS FOR PERSONAL/PROFESSIONAL SERVICES CONTRACTS

#### I. DEFINITIONS

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

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

## **II. FEDERAL CHANGES**

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

## **III. ACCESS TO RECORDS**

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

## **IV. DEBARMENT AND SUSPENSION**

- A.** The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally

funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

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

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

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

#### **VI. NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

- A.** If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the City, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the City is located. The Contractor must include an equivalent provision in its sub agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
- B.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- C.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement between the FTA and the City, and any Amendments thereto, or the

Federal Government's administration or enforcement of federal laws, regulations, and requirements.

- D. Additional Notice to U.S. DOT Inspector General.** The Contractor must promptly notify the City, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the City is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement with the City involving a principal, officer, employee, agent, or Third Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

## **VII. CIVIL RIGHTS**

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

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

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

## **VIII. NONDISCRIMINATION ON THE BASIS OF DISABILITY**

The Contractor agrees to comply with the following federal prohibitions against discrimination based on disability:

### **A. Federal laws, including:**

1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
2. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., Titles I, II, and III, which requires that accessible facilities and services be made available to individuals with disabilities;
3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
5. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities

**B. Federal regulations and guidance, including:**

1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
2. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38;
4. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39;
5. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
6. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
7. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
8. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, subpart F;
9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
10. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
11. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
12. Other applicable federal civil rights and nondiscrimination regulations and guidance..

**IX. SBE/DBE ASSURANCES**

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

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

to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

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

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.
- B.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C.** The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

- A. Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
  - 1. Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such

data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

- 2. Federal License.** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:

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

- 6. Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
- 7. Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- C. Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- D. Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

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

- A. Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar Day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages** – The City and County of San Francisco shall upon its own action or upon written request of an authorized

representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

### **XIII. ENERGY CONSERVATION REQUIREMENTS**

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

### **XIV. SEISMIC SAFETY REQUIREMENTS**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

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

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

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

- A.** Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor

agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

## **XVII. PRIVACY**

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

## **XVIII. DRUG AND ALCOHOL TESTING**

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

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

See Section 8.1 of Agreement Terms and Conditions.

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

See Section 8.2 of Agreement Terms and Conditions.

## **XXI. BUY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials (*excluding* cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) used in FTA-funded projects are produced in the United States, unless a waiver has been

granted by FTA or the product is subject to a general waiver. “Construction materials” include an article, material, or supply that is or consists primarily of:

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

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

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

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

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

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

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

### **XXIV. RECYCLED PRODUCTS**

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

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

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

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.
- C. Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle

complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

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

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

## **XXVII. FLY AMERICA**

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

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

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

- 1. General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's Project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.
- 2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- 3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas** – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

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

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

**XXX. TEXTING WHILE DRIVING; DISTRACTED DRIVING**

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

**XXXI. SEAT BELT USE**

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

**XXXII. DISPUTE RESOLUTION PROCEDURE**

See Section 11.6 of the Agreement Terms and Conditions.

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

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

**XXXIV. PROMPT PAYMENT**

- A. In accordance with SFMTA’s SBE Program, no later than three Days from the date of Contractor’s receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors. Unless the prime Contractor notifies the CCO in writing within 10 business days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subcontractor. Within five business days of such payment,

Contractor shall confirm that all subs have been paid via the B2GNow System. Failure to submit all required payment information into the B2GNow System may result in the suspension of future progress payments to Contractors.

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

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

As provided by 49 U.S.C. § 5325(k):

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

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

**B.** Contractor also assures that its subcontractor will:

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

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

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

**Appendix F**

**Small Business Enterprise (SBE) Program under SFMTA's  
Disadvantaged Business Enterprise (DBE) Program for Professional  
and Technical Services  
Requirements for Architects, Engineers, Planners, Environmental Scientists and  
Other Professional Services Contracts**

**Appendix G**  
**Directory of Subcontractors**

| <b>Firm Name</b>                        | <b>Contact<br/>(Name, Email Address, &amp; Phone<br/>Number)</b>                                                               | <b>Address</b>                                                     | <b>SBE</b> |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|------------|
| AGS Inc.                                | Bahram Khamenehpour<br><a href="mailto:bahram.khamenehpour@agsinc.com">bahram.khamenehpour@agsinc.com</a><br>415-777-2166 x 21 | 111 New Montgomery Street,<br>Suite 700<br>San Francisco, CA 94105 | X          |
| BESS Testlab Inc.                       | Anthony Bohorquez<br><a href="mailto:abohorquez@besstestlab.com">abohorquez@besstestlab.com</a><br>408-988-0101                | 2463 Tripaldi Way<br>Hayward, CA 94545                             |            |
| ISI Inspection Services, Inc.           | Jose Lorenzo<br><a href="mailto:jlorenzo@inspectionsservices.net">jlorenzo@inspectionsservices.net</a><br>510-900-2100         | 1798 University Avenue<br>Berkeley, CA 94703-1514                  | X          |
| Merrill Morris Partners, Inc.           | Cathy Merrill<br><a href="mailto:cmerrill@merrill-morris.com">cmerrill@merrill-morris.com</a><br>415-291-8960                  | 249 Front Street<br>San Francisco CA 94111                         | X          |
| Parsons Transportation Group<br>Inc.    | Ibro Muftic<br><a href="mailto:Ibro.Muftic@parsons.com">Ibro.Muftic@parsons.com</a><br>415-407-8893                            | 50 California St., Suite 1500<br>San Francisco, CA 94111           |            |
| Robin Chiang & Company                  | Peggy Chiang<br><a href="mailto:pchiang@designbythebay.com">pchiang@designbythebay.com</a><br>415-995-9870                     | 381 Tehama Street<br>San Francisco, CA 94103                       | X          |
| Saylor Consulting Group                 | Natalie Saylor<br><a href="mailto:nsaylor@SaylorConsulting.com">nsaylor@SaylorConsulting.com</a><br>415 399-9990               | 505 Montgomery St., 11th Floor<br>San Francisco, CA 94111          | X          |
| SCA Environmental, Inc.                 | Christina Codemo<br><a href="mailto:ccodemo@sca-enviro.com">ccodemo@sca-enviro.com</a><br>(415) 867-9540                       | 320 Justin Dr.<br>San Francisco, CA 94112                          | X          |
| Slate Geotechnical<br>Consultants, Inc. | Debra Murphy<br><a href="mailto:dmurphy@slategeotech.com">dmurphy@slategeotech.com</a><br>510-277-3325 x 702                   | 5940 College Ave, Suite D<br>Oakland, CA 94618                     | X          |
| STV Incorporated                        | Anna Harvey<br><a href="mailto:anna.harvey@stvinc.com">anna.harvey@stvinc.com</a><br>415-672-2852                              | 44 Montgomery Street,<br>Suite 21-108,<br>San Francisco, CA 94104  |            |
| Transit Systems Engineering,<br>Inc.    | Ravi Swamy<br><a href="mailto:ravi.swamy@tseinc.us">ravi.swamy@tseinc.us</a><br>720-237-8367                                   | 1916 Franklin Street<br>Oakland, CA 94612                          |            |

|                      |                                                                                                                    |                                                      |   |
|----------------------|--------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|---|
| VST Engineering Inc. | Anthony Valdiosera<br><a href="mailto:avaldiosera@vst.engineering">avaldiosera@vst.engineering</a><br>510-304-2082 | 2030 Franklin Street, Suite 700<br>Oakland, CA 94612 | X |
| Wilson Ihrig/RWDI    | Derek Watry<br><a href="mailto:dwatry@wilsonihrig.com">dwatry@wilsonihrig.com</a><br>510-658-6719                  | 5900 Hollis St. Suite T1<br>Emeryville, CA 94608     |   |
| YEI Engineers, Inc.  | Brandon Yee<br><a href="mailto:byee@yeiengineers.com">byee@yeiengineers.com</a><br>510-957-1611                    | 7677 Oakport Street, Suite 200<br>Oakland, CA 94621  | X |

**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**

**PGH Wong Engineering, Inc.**

**Contract No. CS-196  
(CCO No. 26-1678)**

## Table of Contents

|                                                                                |    |
|--------------------------------------------------------------------------------|----|
| <b>Article 1: Definitions</b>                                                  | 1  |
| <b>Article 2: Term of the Agreement</b>                                        | 4  |
| 2.1 Term                                                                       | 4  |
| 2.2 Options to Extend                                                          | 4  |
| <b>Article 3: Financial Matters</b>                                            | 4  |
| 3.1 Certification of Funds; Budget and Fiscal Provisions                       | 4  |
| 3.1.1 Termination in the Event of Non-Appropriation                            | 4  |
| 3.1.2 Maximum Costs                                                            | 4  |
| 3.2 Authorization to Commence Work                                             | 5  |
| 3.3 Compensation                                                               | 5  |
| 3.3.1 Calculation of Task Order Compensation and Contract Not to Exceed Amount | 5  |
| 3.3.2 Payment Limited to Satisfactory Services                                 | 8  |
| 3.3.3 Withhold Payments                                                        | 8  |
| 3.3.4 Invoice Format                                                           | 8  |
| 3.3.5 Prompt Payment of Subcontractors                                         | 10 |
| 3.3.6 Getting Paid by the City for Services                                    | 10 |
| 3.3.7 Grant-Funded Contracts                                                   | 10 |
| 3.3.8 Payment Terms                                                            | 11 |
| 3.4 Audit and Inspection of Records                                            | 11 |
| 3.5 Submitting False Claims                                                    | 11 |
| 3.6 Payment of Prevailing Wages                                                | 11 |
| 3.6.1 Covered Services                                                         | 11 |
| 3.6.2 Wage Rates                                                               | 12 |
| 3.6.3 Subcontract Requirements                                                 | 12 |
| 3.6.4 Job Site Notices and Records                                             | 12 |
| 3.6.5 Payroll Records                                                          | 12 |
| 3.6.6 Certified Payrolls                                                       | 12 |
| 3.6.7 Compliance Monitoring                                                    | 13 |
| 3.6.8 Remedies                                                                 | 13 |
| 3.7 Apprentices                                                                | 13 |
| <b>Article 4: Services and Resources</b>                                       | 14 |
| 4.1 Services Contractor Agrees to Perform                                      | 14 |
| 4.2 Changes                                                                    | 14 |

|                                                                                  |           |
|----------------------------------------------------------------------------------|-----------|
| 4.3 Task Order Procedures.....                                                   | 14        |
| 4.3.1 Task Order Requirements .....                                              | 14        |
| 4.3.2 Task Order Request .....                                                   | 16        |
| 4.3.3 Contractor Request for Information.....                                    | 16        |
| 4.3.4 Contractor Task Order Proposal .....                                       | 16        |
| 4.3.5 Negotiation of Cost and Profit.....                                        | 17        |
| 4.3.6 Record of Negotiations .....                                               | 17        |
| 4.3.7 SBE Goals.....                                                             | 17        |
| 4.3.8 Notice to Proceed.....                                                     | 17        |
| 4.3.9 Changes to Task Order Pricing.....                                         | 17        |
| 4.3.10 Failure to Agree on Terms of Task Order .....                             | 17        |
| 4.4. Qualified Personnel.....                                                    | 18        |
| 4.4.1 Substitution of Key Personnel .....                                        | 18        |
| 4.5 Subcontracting .....                                                         | 18        |
| 4.6 Independent Contractor; Payment of Employment Taxes and Other Expenses ..... | 19        |
| 4.6.1 Independent Contractor .....                                               | 19        |
| 4.6.2 Payment of Employment Taxes and Other Expenses.....                        | 19        |
| 4.7 Assignment .....                                                             | 20        |
| 4.8 Service Warranties .....                                                     | 20        |
| 4.9 Liquidated Damages .....                                                     | 20        |
| 4.10 Reserved. (Performance Bond).....                                           | 20        |
| 4.11 Emergency - Priority 1 Service.....                                         | 20        |
| <b>Article 5: Insurance and Indemnity .....</b>                                  | <b>20</b> |
| 5.1 Insurance .....                                                              | 20        |
| 5.1.1 Required Coverages.....                                                    | 20        |
| 5.1.2 Additional Insured .....                                                   | 21        |
| 5.1.3 Waiver of Subrogation.....                                                 | 22        |
| 5.1.4 Primary Insurance.....                                                     | 22        |
| 5.1.5 Other Insurance Requirements .....                                         | 22        |
| 5.2 Indemnification .....                                                        | 23        |
| 5.3 Indemnification and Defense Obligations For Design Professionals .....       | 24        |
| 5.3.1 Defense Obligations.....                                                   | 24        |
| 5.3.2 Indemnity Obligations .....                                                | 24        |
| 5.3.3 Copyright Infringement .....                                               | 24        |

|                                                                                                           |    |
|-----------------------------------------------------------------------------------------------------------|----|
| 5.3.4 Severability Clause Specific to Indemnification and/or Defense Obligations .....                    | 24 |
| <b>Article 6: Liability of the Parties</b> .....                                                          | 24 |
| 6.1 Liability of City.....                                                                                | 24 |
| 6.2 Liability for Use of Equipment.....                                                                   | 25 |
| 6.3 Liability for Incidental and Consequential Damages.....                                               | 25 |
| <b>Article 7: Payment of Taxes</b> .....                                                                  | 25 |
| 7.1 Contractor to Pay All Taxes.....                                                                      | 25 |
| 7.2 Possessory Interest Taxes .....                                                                       | 25 |
| 7.3 Withholding .....                                                                                     | 25 |
| <b>Article 8: Termination and Default</b> .....                                                           | 25 |
| 8.1 Termination for Convenience .....                                                                     | 25 |
| 8.2 Termination for Default; Remedies .....                                                               | 27 |
| 8.3 Non-Waiver of Rights.....                                                                             | 29 |
| 8.4 Rights and Duties upon Termination or Expiration.....                                                 | 29 |
| <b>Article 9: Rights in Deliverables</b> .....                                                            | 30 |
| 9.1 Ownership of Results .....                                                                            | 30 |
| 9.2 Works for Hire .....                                                                                  | 30 |
| <b>Article 10: Additional Requirements Incorporated by Reference</b> .....                                | 30 |
| 10.1 Laws Incorporated by Reference .....                                                                 | 30 |
| 10.2 Governmental Conduct-Related Contractual Obligations .....                                           | 30 |
| 10.2.1 Conflict of Interest.....                                                                          | 30 |
| 10.2.2 Prohibition on Use of Public Funds for Political Activity .....                                    | 30 |
| 10.2.3 Limitations on Contributions.....                                                                  | 31 |
| 10.3 Employment-Related Contractual Obligations.....                                                      | 31 |
| 10.3.1 Small Business Enterprise (SBE) Program under Disadvantaged Business Enterprise (DBE) Program..... | 31 |
| 10.3.2 Minimum Compensation Ordinance.....                                                                | 32 |
| 10.3.3 Health Care Accountability Ordinance.....                                                          | 32 |
| 10.3.4 First Source Hiring Program.....                                                                   | 33 |
| 10.3.5 Reserved (Working with Minors).....                                                                | 33 |
| 10.3.6 Alcohol and Drug-Free Workplace .....                                                              | 33 |
| 10.3.7 Nondiscrimination in Contracts .....                                                               | 33 |
| 10.3.8 Nondiscrimination in the Provision of Employee Benefits .....                                      | 33 |
| 10.4 Environmental-Related Contractual Obligations .....                                                  | 33 |
| 10.4.1 Reserved. (Packaged Water Prohibition).....                                                        | 34 |

|                                                                               |    |
|-------------------------------------------------------------------------------|----|
| 10.4.2 Tropical Hardwood and Virgin Redwood Ban .....                         | 34 |
| 10.4.3 Food Service Waste Reduction Requirements .....                        | 34 |
| 10.4.4 Reserved. (Sugar-Sweetened Beverage Prohibition).....                  | 34 |
| 10.5 Slavery Era Disclosure.....                                              | 34 |
| 10.6 Reserved. (Nonprofit Contractor Obligations) .....                       | 34 |
| <b>Article 11: General Provisions</b> .....                                   | 34 |
| 11.1 Notices to the Parties .....                                             | 34 |
| 11.2 Compliance with Laws Requiring Access for People with Disabilities ..... | 34 |
| 11.3 Incorporation of Recitals.....                                           | 35 |
| 11.4 Sunshine Ordinance .....                                                 | 35 |
| 11.5 Modification of this Agreement.....                                      | 35 |
| 11.6 Dispute Resolution Procedure.....                                        | 35 |
| 11.6.1 Negotiation; Alternative Dispute Resolution.....                       | 35 |
| 11.6.2 Government Code Claim Requirement .....                                | 35 |
| 11.7 Agreement Made in California; Venue.....                                 | 36 |
| 11.8 Construction.....                                                        | 36 |
| 11.9 Entire Agreement.....                                                    | 36 |
| 11.10 Compliance with Laws .....                                              | 36 |
| 11.11 Severability .....                                                      | 36 |
| 11.12 Cooperative Drafting .....                                              | 36 |
| 11.13 Order of Precedence.....                                                | 36 |
| 11.14 Notification of Legal Requests .....                                    | 36 |
| 11.15 No Third-Party Beneficiaries.....                                       | 37 |
| <b>Article 12: SFMTA Specific Terms</b> .....                                 | 37 |
| 12.1 Large Vehicle Driver Safety Training Requirements .....                  | 37 |
| <b>Article 13: Data and Security</b> .....                                    | 37 |
| 13.1 Nondisclosure of Private, Proprietary or Confidential Information .....  | 37 |
| 13.1.1 Protection of Private Information .....                                | 37 |
| 13.1.2 City Data; Confidential Information.....                               | 37 |
| 13.2 Reserved. (Payment Card Industry (PCI) Requirements).....                | 38 |
| 13.3 Reserved. (Business Associate Agreement) .....                           | 38 |
| 13.4 Management of City Data and Confidential Information .....               | 38 |
| 13.4.1 Use of City Data .....                                                 | 38 |
| 13.4.2 Use of Generative Artificial Intelligence in Deliverables .....        | 38 |

|                                                                                     |    |
|-------------------------------------------------------------------------------------|----|
| 13.4.3 Disposition of City Data .....                                               | 38 |
| 13.5 Ownership of City Data .....                                                   | 39 |
| 13.6 Loss or Unauthorized Access to City’s Data; Security Breach Notification ..... | 39 |
| 13.7 Cybersecurity Risk Assessment .....                                            | 39 |
| <b>Article 14: Appendices</b> .....                                                 | 39 |
| 14.1 Appendices .....                                                               | 39 |
| <b>Article 15: MacBride and Signature</b> .....                                     | 40 |
| 15.1 MacBride Principles - Northern Ireland .....                                   | 40 |

**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  
PGH Wong Engineering, Inc.  
Contract No. CS-196**

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

**Recitals**

**A.** The SFMTA wishes to retain Contractor for As-Needed Specialized Engineering Services for multiple federally funded projects.

**B.** Contractor was competitively selected as one of the highest-qualified scorers pursuant to a Request for Proposals (RFP) issued on February 19, 2026 under San Francisco Administrative Code Section 6.43.

**C.** Contractor committed to a participation goal of 25% for Small Business Enterprise(s) (“SBEs”) for this Agreement.

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

**E.** Approval for the Agreement was obtained on February 2, 2026 from the Civil Service Commission under PSC number DHRPSC0005828 which authorizes the award of multiple agreements, to cover the full amount of this contract and the individual duration of which cannot exceed five years.

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

**1.2      “Appendices”** means the appendices listed in Article 14 (“Appendices”) herein.

**1.3** “**Artificial Intelligence**” or “**Artificial Intelligence Model**” means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

**1.4** “**Artificial Intelligence System**” means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

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

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

**1.7** “**City Data**” means all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information and Deliverable Data.

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

**1.9** “**Confidential Information**” means confidential City information including, but not limited to, personal identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information. Confidential Information includes, without limitation, City Data.

**1.10** “**Contractor**” means PGH Wong Engineering, Inc., 182 2<sup>nd</sup> Street, San Francisco, CA 94105.

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

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

**1.13** “**Deliverable Data**” means any data that is required to be delivered to City as a Deliverable, or as a part of a Deliverable, under this Agreement.

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

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

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

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

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

**1.19 “Generative Artificial Intelligence”** means Artificial Intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the Artificial Intelligence’s training data.

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

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

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

**1.23 “Personal Identifiable Information (PII)”** means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household as further defined in the California Consumer Privacy Act.

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

**1.25 “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.

**1.26 “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, Deliverables, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

**1.27 “Small Business Enterprise” or “SBE”** means a for-profit, small business concern with a three-year average gross revenue that do not exceed the thresholds set forth in Appendix F, Section III.B and either: 1) is certified under any of the following programs: the

State of California's Small Business Program with the Department of General Services (State Program), the City and County of San Francisco's LBE Program (City Program), or 2) has received written confirmation from CCO that it meets the SFMTA's program eligibility requirements.

**1.28 "Task Order"** means a written directive from the SFMTA to the Contractor to perform specified work, issued under the procedures described in Section 4.3 below.

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

**2.1 Term.** The term of this Agreement shall commence on the Effective Date and expire on the date three years (1,095 calendar days) after the Effective Date, unless earlier terminated as otherwise provided herein.

**2.2 Options to Extend.** The SFMTA has the option to renew the Agreement for a period of two (2) additional years. The SFMTA only may extend this Agreement beyond the expiration date in accordance with Administrative Code Section 6.43 at the SFMTA's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **Article 3 Financial Matters**

### **3.1 Certification of Funds; Budget and Fiscal Provisions**

**3.1.1 Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to the 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. The City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

and the Parties having modified this Agreement as provided in Section 11.5 (Modification of this Agreement).

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

### **3.3 Compensation.**

**3.3.1 Calculation of Task Order Compensation and Contract Not to Exceed Amount.** The SFMTA will pay Contractor on a task-order basis for Services it performs under this Agreement. The total amount of the Task Orders awarded under this Agreement shall not exceed (“NTE”) Five Million Dollars (\$5,000,000). This amount is based on City’s estimated spend for the contract term. Should SFMTA’s actual spend exceed its estimated spend for the contract term, SFMTA may in its sole discretion increase the contract NTE for the contract term, subject to the limitations in San Francisco Administrative Code section 6.43. City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement. 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 subject to a total not to exceed amount (using the hourly labor rates set forth in Appendix B and Appendix C plus a fixed profit). The City may withhold a portion of payment as a reasonable retention, not to exceed 5%, until the conclusion of the Task Order. Contractor’s compensation for Task Orders shall be based on the following:

**(a) Direct Hourly Labor Rates.** The direct hourly labor rates in Appendix B are fixed negotiated rates and shall not change for the first 12 months after the Effective Date of this Agreement. Thereafter, during the term of this Agreement, Contractor may request annual escalation based on the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U). No direct hourly rate may be increased without prior written approval of the SFMTA. Contractor must request any escalation of these direct hourly labor rates no later than 30 Days before the anniversary of the Effective Date of this Agreement, and failure to timely do so may result in a denial of the request. Any requests for escalation of direct hourly labor rates must include evidence of the change in the CPI-U, evidence of payroll documentation, and an updated Appendix B for the SFMTA’s approval. The SFMTA will review all requests for escalation of direct hourly labor rates within 30 Days of receipt and notify Contractor of either an approval or denial. If approved, the new rates will become effective as of the date that a contract modification is executed, but no earlier than the anniversary of the Effective Date of this Agreement. In no event will the start of the new rates be backdated. Subsequent rate escalations will be effective no less than one year after the most recent prior rate escalation.

**(b) Overhead Rates.**

**(i)** The overhead rates in Appendix C shall be billed at that fixed level until 12 months after the Effective Date of this Agreement. Thereafter, during the term of this Agreement, the overhead rates in Appendix C may be adjusted annually with prior written approval from the SFMTA and will be effective as of the date that a contract modification is executed. The Contractor's and subcontractors' overhead rates are subject to audit in compliance with Federal requirements.

**(ii)** The overhead billing rates in Appendix C, including any adjustment to such rates as provided for above, are subject to readjustment to reflect actual rates 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 Contractor's and all subcontractors' actual rates during the term of this Agreement to the Project Manager. For each rate paid to the Contractor that exceeds the Contractor's or any subcontractor's actual rate, the Contractor shall reimburse to the City the total difference between the rate paid and Contractor's or subcontractor's actual rate during the term of this Agreement. Contractor shall reimburse City within 30 Days of written notice from City seeking reimbursement. For each actual overhead rate of Contractor or subcontractor that exceeds the rate paid to Contractor, City shall pay to Contractor the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Contractor within 60 Days of City's receipt of all of Contractor's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Contractor's rates as provided above.

**(c) Profit.**

**(i)** The Parties shall negotiate a profit as a lump sum amount for each Task Order, and it shall be no greater than 10% of the total cost of the Task Order. It is understood and agreed that the profit is a fixed amount that cannot be exceeded because of any differences between the estimated number of hours required to perform the Services in a Task Order and the actual number of hours required to perform the work. In no event shall payments to the Contractor exceed the total amount of the Task Order. The SFMTA may approve an increase in the profit only if such increase is required due to an increase in the Services or to additional work that increases the Services. The profit shall not be increased for Contractor's additional level of effort to complete the Services. It is further understood and agreed that the profit is only due and payable for Task Order work for which the SFMTA has given notice to proceed and for which the Contractor has satisfactorily completed.

**(ii)** The profit will be prorated and paid monthly in proportion to the Services satisfactorily completed. A payment for an individual month shall include that approved portion of the profit allocable to the Task Order work satisfactorily completed during said month and not previously paid. Any portion of the profit not previously paid in the monthly payments shall be included in the final payment. The method of proration may be adjusted by the

SFMTA to reflect deletions or amendments in the project work that are approved as herein described.

(iii) If the Services are reduced, that reduction shall be memorialized in an amendment to the Task Order, and the profit for that work shall be reduced, as negotiated by the Parties, but such reduction shall not be less than the proportional value of the reduced Services.

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

(e) **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, including travel 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, such costs must be documented in detail and pre-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.

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

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

- i. Contractor's and subcontractors' personnel relocation costs.

- ii. Purchases of office and field supplies or equipment, unless the supplies or equipment are: (1) not ordinary or typical supplies and equipment; and (2) uniquely required of this Project; and (3) serving only this Project. If all three requirements are met, the costs shall be separately identified in the Task Order. These supplies or equipment will then need to be turned over to the SFMTA at the end of the Contract.
- iii. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable unless otherwise approved by the SFMTA in advance as being necessary (e.g., no viable public transit options available).
- iv. Any travel expenses, including transportation, meals, and lodging costs, that are not approved by the SFMTA.
- v. Any overnight courier services extending outside of the Bay Area between Contractor offices except as approved by the SFMTA.
- vi. Any personal or entertainment expenses.
- vii. Computer usage.
- viii. Facsimile and telecommunications expenses.

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

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

**3.3.4 Invoice Format.** Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and the SFMTA, and include a unique invoice number and a specific invoice date. Payment shall be made by the City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. 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. For Task Orders based on a negotiated number of hours subject to a total not to exceed amount, Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in the Task Order. 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. Each Contractor invoice shall contain the following information, and invoices that do not include all required information or contain inaccurate information will not be processed for payment:

- (a) Contract Number
- (b) Task Order Number
- (c) Purchase Order Number for the Task Order
- (d) PeopleSoft Supplier Name and ID
- (e) Description of the work performed or services rendered
- (f) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced, including timesheets except where Contractor invoices for a Deliverable that is priced in the Task Order as a lump sum, or as estimated milestone payments described in the Task Order budget
- (g) Overhead costs
- (h) Other direct costs
- (i) A copy of the receipts for all expenses invoiced
- (j) Subcontractor costs supported by invoice itemization in the same format as described here
- (k) Profit for current invoice period and amount of profit as of date of invoice. Profit will be calculated as a prorated portion of the total profit for the task for which Contractor seeks payment.
- (l) Contract payment terms
- (m) Sales/use tax (if applicable)
- (n) Total costs
- (o) SFMTA Certificate of Progress Payment Form
- (p) SFMTA Application for Progress Payment Form
- (q) SFMTA Progress Payment Report (SFMTA SBE Form No. 6):  
The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the Progress Payment Report Form. If the Progress Payment Report Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA and Contractor of the omission. If Contractor's failure to provide the Progress Payment Report Form is not explained to the Controller's satisfaction, the Controller will withhold 20 percent of the payment due pursuant to that invoice until the Progress Payment Report Form is provided.

(r) Monthly Progress Report

**3.3.5 Prompt Payment of Subcontractors**

(a) **SBE Payment and Utilization Tracking System.** SBE participation goal applies to this Agreement. Contractor shall: (a) within three (3) business days of City's payment of any invoice to Contractor, pay SBE subcontractors; and (b) within five (5) business days of the City's payment of any invoice to Contractor, confirm its payment to subcontractors using the SFMTA's B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CCO. Failure to submit all required payment information into the B2GNow System may result in the suspension of future progress payments to Contractors.

(b) **Subcontractor Prompt Payment.** In accordance with the SBE Program under the SFMTA's DBE's Program no later than three working days from the date of Contractor's receipt of a progress payment by the City the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors, unless the prime Contractor notifies CCO in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subcontractor. If Contractor does not pay its subcontractors within seven calendar days after receipt of the progress payment, in accordance with San Francisco Administrative Code Section 6.42(f), Contractor shall pay to the subcontractor directly a penalty of 2% of the amount due per month for every month or portion thereof that payment is not made. This provision does not create a private right of action against the City.

**3.3.6 Getting Paid by the City for Services**

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

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

**3.3.7 Grant-Funded Contracts**

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

**(b) Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed due to Contractor's non-compliance with the Grant Terms, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

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

### **3.3.8 Payment Terms**

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

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

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

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

### **3.6 Payment of Prevailing Wages**

**3.6.1 Covered Services.** Services to be performed by Contractor under this Agreement will involve the performance of work covered by Articles 101 through 107 of the San Francisco Labor and Employment Code, as applicable, including without limitation the California Labor Code provisions incorporated therein (collectively, "Covered Services"), all of

which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

**3.6.2 Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Contractor agrees that it shall pay not less than the highest general Prevailing Rate of Wages, as determined by the Board of Supervisors and DIR, to all workers employed by Contractor who perform Covered Services under this Agreement. Copies of the Prevailing Rate of Wages as fixed and determined in accordance with Labor and Employment Code Section 103.2 are available from the City's Office of Labor Standards and Enforcement ("OLSE") and are on file at the Department's principal office or at the job site and shall be made available to any interested party on request.

**3.6.3 Subcontract Requirements.** Contractor shall insert in every subcontract for the performance of Covered Services under this Agreement a provision requiring subcontractor to pay all persons performing labor in connection with Covered Services under the subcontract not less than the highest general prevailing rate of wages as determined by the Board of Supervisors and DIR for such labor or services.

**3.6.4 Job Site Notices and Records.** Contractor shall prominently post at each job-site a sign informing employees that the work is subject to City's Prevailing Wage requirements and that these requirements are enforced by OLSE. Contractor shall also maintain a sign-in and sign-out sheet in a format prescribed by OLSE showing which employees are present on the job site.

**3.6.5 Payroll Records.** Contractor shall keep or cause to be kept, for a period of four years from the date of completion of the subject work, complete and accurate payroll records for all workers performing Covered Services, including without limitations time cards, trust fund reports, apprenticeship agreements, accounting ledgers, tax forms, proof of payment, and superintendent and foreperson daily logs for all trades workers performing work. Such records shall include the name, address and social security number of each worker who provided Covered Services, including apprentices, their classification, a general description of the Services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall perform any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by City and its authorized representatives.

**3.6.6 Certified Payrolls.** Contractor shall prepare certified payrolls for the period involved for all employees, including those of subcontractors, who performed Covered Services. Contractor and each subcontractor performing Covered Services shall electronically submit certified payrolls to the City and to the DIR as specified by the City and DIR. Contractor

and all subcontractors that will perform Covered Services must attend a training session on the preparation and electronic submission of certified payroll records provided by City. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

**3.6.7 Compliance Monitoring.** Covered Services performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements. Contractor agrees that (i) OLSE shall have the right to engage in random inspections of job sites and have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks, and (ii) OLSE may audit such records of Contractor and any subcontractors as it reasonably deems necessary. Failure to comply with these requirements may result in penalties and forfeitures pursuant to the California Labor Code, including Section 1776(h), as amended from time to time, and San Francisco Labor and Employment Code Article 101 through 107, as applicable.

**3.6.8 Remedies.** Should Contractor, or any subcontractor performing Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement or subcontract for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in San Francisco Labor and Employment Code and/or California Labor Code Section 1775. City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

### **3.7 Apprentices.**

**3.7.1** Contractor and its subcontractors of every tier that provide Covered Services under this Agreement (as defined in Section 1.1 above) shall, as a material term of the Agreement, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4 [commencing at Section 3070], and Section 1777.5 of the Labor Code) and Administrative Code Section 6.22(n). Contractor shall be solely responsible for securing compliance with Labor Code Section 1777.5 for all apprentice able occupations.

**3.7.2** Contractor shall include in all of its subcontracts the obligation for subcontractors to comply with the requirements of the State Apprenticeship Program.

**3.7.3** Should Contractor fail to comply with the apprenticeship requirements of Labor Code Section 1777.5, Contractor shall be subject to the penalties prescribed in Labor

Code Section 1777.7. The interpretation and enforcement of Labor Code Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.

**3.7.4** Contractor, if not signatory to a recognized apprenticeship training program under Labor Code, Chapter 4, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Contractor shall require its subcontractors who are not signatories to provide such evidence to the City as a condition precedent for qualifying for payment from the City.

**3.7.5** Contractor shall comply with all requests by the City to provide proof that Contractor and all of its subcontractors at every tier providing Covered Services are in compliance with the State Apprenticeship Program, including proof that Contractor and all of its subcontractors at any tier providing Covered Services contributed to the appropriate apprenticeship fund(s).

#### **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request and the City is not required to compensate for Services beyond those stated.

**4.2 Changes.** The SFMTA may at any time, by a written order, make changes within the general scope of this Agreement. Such change shall serve to modify this Agreement to the extent necessary to execute the change as directed. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Services under this Agreement, whether changed or not changed by the order, the SFMTA shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the Agreement accordingly. The Contractor must assert its right to an adjustment under this article within three business days from the date of receipt of the written order. Failure by Contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment. However, if the SFMTA decides that the facts justify it, the SFMTA may receive and act upon a proposal submitted at any time before final payment of the Agreement. If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, the SFMTA shall have the right to prescribe the manner of the disposition of such equipment or materials. Failure to agree to any adjustment shall be a dispute under Section 11.6, Dispute Resolution Procedure. However, nothing in this provision shall excuse the Contractor from proceeding with the Agreement as changed.

**4.3 Task Order Procedures.** Contractor shall perform the Services under Task Orders the SFMTA issues in accordance with the process described below.

**4.3.1 Task Order Requirements.** The SFMTA will define requirements for Task Orders.

**(a) Task Order Scope of Work.** The Task Order scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required SBE forms, and the Contractor Task Order proposal must be incorporated into the overhead rate (as approved in Appendix C). Separately from overhead, project management time required by a particular Task Order may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, and a task monitoring system (e.g., bi-weekly project reports or monthly status updates).

**(b) 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.

**(c) 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 a Task Order. 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 Order. In addition, the Contractor shall make good faith efforts to have all contracts signed with subcontractors within three weeks of NTP for the overall Contract. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

**(d) Transmittal of Work Product.** When requested by the SFMTA's Project Manager, and after completion of each task and subtask, the Contractor shall transmit to the SFMTA 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 shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to the SFMTA.

**(e) The SFMTA's Responsibilities Regarding Submittals.** The SFMTA will review and comment on Contractor's submittals generally within two calendar weeks of submittal. The SFMTA 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 SFMTA'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 SFMTA 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 SFMTA review comments or directives, either written or oral, to require work efforts not included in the Task Order, the Contractor shall within five business days of discovering the perceived extra work provide the SFMTA with either a written Contractor Request for Information under subsection

4.3.3 below, or a Contractor Proposal to perform additional work under the Task Order, which contains all of the information required by subsection 4.3.4 below for a Contractor Task Order Proposal.

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

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

**4.3.4 Contractor Task Order 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 direct 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, and labor to fill out required SBE forms. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one-half times the billing rate;

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

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

(iv) Proposed profit as follows: Profit will be negotiated on a task order basis and will not exceed 10% of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Contractor, Subcontractor(s) or combination thereof.

**4.3.5 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 a fixed profit to perform the work of each subtask and task and a total not-to-exceed price for the Task Order.

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

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

- The individual SBE goal set for each Task Order.
- The overall SBE participation goal established for the entire Agreement (which includes the commitments the Contractor made to each of its listed SBE subcontractors at time of proposal). See Section 10.6 (Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program) for more information on the SBE Program.

**4.3.8 Notice to Proceed.** The SFMTA will issue and send to Contractor a Task Order Form (refer to Appendix D), 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. Contractor shall use this Task Order number when submitting invoices to the SFMTA's Project Manager for payment under the Task Order.

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

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

**4.4 Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services for which it is contracted to provide through this Agreement, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. All personnel, including those assigned at the City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule of a Task Order. The SFMTA reserves the right to require the Contractor to reassign any individual on the Contractor's project team if the SFMTA is unsatisfied with that person's performance or that person fails to demonstrate the required qualifications or expertise. The SFMTA reserves the right to review and approve any replacement of team members, and the right to reject invoices submitted related to work performed by replacement team members that the SFMTA did not approve. Contractor shall advise SFMTA immediately any time one of the individuals designated as Key Personnel in Appendix B deviates from their committed role or time on a Task Order (e.g., is assigned to another project). The SFMTA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

**4.4.1 Substitution of Key Personnel.** Substitutions of Key Personnel will not be allowed except for extenuating circumstance, such as death, illness or departure from the firm, or with the City's prior approval, which approval will not be withheld as long as such substitution will not delay or otherwise harm the Project(s), which shall be determined by the SFMTA in its sole discretion. If it is necessary to substitute Key Personnel, the Contractor shall propose a replacement in writing to the SFMTA for approval.

The Contractor shall replace any Key Personnel departing from the Project(s) or departing from his/her assigned role in the Project(s) with an individual of comparable or greater experience on a non-temporary basis within 30 calendar days of the departure of the Key Personnel, unless the SFMTA grants an extension to that time limit in writing. Contractor's failure to replace Key Personnel shall be cause for the City to suspend invoice payments.

Contractor shall not be relieved of its obligation for full performance of the Scope of Services as a result of any unfilled position. The Contractor shall be held fully responsible for any inefficiencies, schedule delays or cost overruns resulting in whole or in part from any Key Personnel departing from the Project or departing from his/her assigned role in the Project before the end of the committed duration.

Contractor shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training and learning on the job.

#### **4.5 Subcontracting**

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

**4.5.2** The SFMTA's execution of this Agreement constitutes its approval of the subcontractors listed in Appendix G.

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

**4.6.1 Independent Contractor.** For the purposes of this Section 4.6, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, including its agents and employees, will not represent or hold itself/themselves out to be employees of the City at any time. Contractor shall not have employee status with the City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that the City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to the City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with Section 4.6. Should the City determine that Contractor is not performing in accordance with the requirements of Section 4.6, the 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 the City believes that an action of Contractor warrants immediate remedial action by Contractor, the City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.6.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with the 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 4.6 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 the City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless the 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 4.6.

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

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

**4.9 Liquidated Damages.** Liquidated damages may be included in individual Task Orders.

**4.10 Reserved. (Performance Bond)**

**4.11 Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance**

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

(a) Commercial General Liability Insurance with limits not less than \$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 Liability Insurance, 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) If required by the City's Risk Manager for a particular task or tasks, Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Contract and shall also provide coverage for the following risks:

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

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

(f) If required by the City's Risk Manager for a particular task or tasks, Cyber and Privacy Liability Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(g) Reserved. (Pollution Liability Insurance)

### **5.1.2 Additional Insured.**

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

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

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

**5.1.3 Waiver of Subrogation.** The Workers' Compensation Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

#### **5.1.4 Primary Insurance**

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

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

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

#### **5.1.5 Other Insurance Requirements**

(a) Thirty Days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than 10 Days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties).

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

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or

legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

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

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

## **5.2 Indemnification.**

**5.2.1** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, Contractors and experts, and related costs, and City's costs of investigating any claims against the City.

**5.2.2** In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification

provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

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

**5.2.4** Under no circumstances will City indemnify, defend, or hold harmless Contractor.

### **5.3 Indemnification and Defense Obligations For Design Professionals.**

**5.3.1 Defense Obligations.** To the fullest extent permitted by law, Contractor shall, following a tender of defense from City, assume the immediate defense of (with legal counsel subject to approval of the City), the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, losses, costs, damages, expenses and liabilities of every kind, nature, and description including, without limitation, injury to or death of any person(s) and incidental and consequential damages (collectively "Damages"), court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation (collectively "Litigation Expenses"), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"). City will reimburse Contractor for the proportionate percentage of defense costs exceeding Contractor's proportionate percentage of fault as determined by a Court of competent jurisdiction.

**5.3.2 Indemnity Obligations.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Indemnitees from and against any and all Liabilities, including but not limited to those for Damages or Litigation Expenses specified in Section 5.2.1.

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

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

**5.3.5** Under no circumstances will City indemnify, defend, or hold harmless Contractor.

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

**6.1 Liability of City.** CITY'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "CALCULATION OF TASK ORDER COMPENSATION AND CONTRACT NOT TO EXCEED AMOUNT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible in accordance with applicable law 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 the City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by 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. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

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

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

## **Article 8      Termination and Default**

### **8.1      Termination for Convenience**

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

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

(a) Completing performance of any Services that the SFMTA requires Contractor to complete prior to the Termination Date

(b) Halting the performance of all Services on and after the Termination Date.

(c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

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

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

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

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

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

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

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

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

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

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

**8.1.6 Payment Obligation.** City's payment obligation under this Section 8.1, Termination for Convenience, shall survive termination of this Agreement.

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

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

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

|            |                                 |
|------------|---------------------------------|
| 3.5        | Submitting False Claims         |
| 4.7        | 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 the Services or to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten (10) days after written notice thereof from the SFMTA to Contractor or from when Contractor otherwise becomes aware of the Event of Default, provided that where a default cannot be fully cured within ten days, the Contractor will be afforded a reasonable period to cure the default so long as the initial cure is underway and diligently thereafter implemented within the initial ten day period. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, in addition to all other remedies available to the SFMTA, 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, reorganization or arrangement, any other petition in bankruptcy or for liquidation, or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

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

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

**8.2.4** Any notice of default must be sent in accordance with Article 11.

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

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

**8.4.1** Section 8.4, Rights and Duties Upon Termination or Expiration, and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

|           |                                                                |
|-----------|----------------------------------------------------------------|
| 3.3.2     | Payment Limited to Satisfactory Services and Delivery of Goods |
| 3.3.7(b)  | Grant Funded Contracts - Disallowance                          |
| 3.5       | Submitting False Claims                                        |
| Article 5 | Insurance and Indemnity                                        |
| 6.1       | Liability of City                                              |
| 6.3       | Liability for Incidental and Consequential Damages             |
| Article 7 | Payment of Taxes                                               |
| 8.1.6     | Payment Obligation                                             |
| 8.2.2     | Default Remedies                                               |

|            |                                     |
|------------|-------------------------------------|
| 9.1        | Ownership of Results                |
| 9.2        | Works for Hire                      |
| 11.6       | Dispute Resolution Procedure        |
| 11.7       | Agreement Made in California; Venue |
| 11.8       | Construction                        |
| 11.9       | Entire Agreement                    |
| 11.10      | Compliance with Laws                |
| 11.11      | Severability                        |
| Article 13 | Data and Security                   |

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

## **Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, any partially-completed Deliverables and related materials shall become the property of and will be transmitted to the City. Unless expressly authorized in writing by the SFMTA, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of the City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon its subcontractors. With City's prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of the Agreement.

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

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by

reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca](http://www.amlegal.com/codes/client/san-francisco_ca).

## **10.2 Governmental Conduct-Related Contractual Obligations.**

**10.2.1 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 SFMTA if it becomes aware of any such fact during the term of this Agreement.

**10.2.2 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.

**10.2.3 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 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 (i) 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; (ii) a candidate for that City elective office; or (iii) 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 (12) months after the date 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 ten percent (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.

## **10.3 Employment-Related Contractual Obligations.**

### **10.3.1 Small Business Enterprise (SBE) Program under Disadvantaged Business Enterprise (DBE) Program**

**(a) General.** The SFMTA is committed to a Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise Program (DBE Program) for the participation of SBEs in federally funded contracting opportunities. In addition, the Contractor must comply with all applicable federal regulations regarding SBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement.

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

**(c) Termination of SBEs.** The prime contractor may not terminate the work designated to be performed by an SBE in the memo required by Section 4.3.7, SBE Goal (or an approved substitute SBE), or any portion of that work, without prior written consent by the SFMTA CCO. A termination includes any reduction or underrun in work listed for a SBE not caused by a material change to the prime contract by the SFMTA. This requirement applies to instances that include, but are not limited to, when a prime contractor seeks to perform work originally designated for a SBE subcontractor with its own forces or those of an affiliate, a non-SBE, or with another SBE firm.

**(i)** The Contractor must utilize the designated SBEs to perform the work and supply the materials described in the Section 4.3.7 memo, unless the contractor obtains the SFMTA written consent under this section; and

**(ii)** Unless the SFMTA consent is provided under this section, the Contractor is not entitled to any payment for work or material unless it is performed or supplied by the designated SBE.

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

**10.3.2 Minimum Compensation Ordinance.** Labor and Employment Code Article 111 applies to this contract. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions

of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

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

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

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

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

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

**10.3.7 Nondiscrimination in Contracts.** Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall

incorporate by reference in all subcontracts the provisions of Articles 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

**10.3.8 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

#### **10.4 Environmental-Related Contractual Obligations.**

##### **10.4.1 Reserved. (Packaged Water Prohibition)**

**10.4.2 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.

**10.4.3 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.

##### **10.4.4 Reserved. (Sugar-Sweetened Beverage Prohibition)**

**10.5 Slavery Era Disclosure.** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

#### **10.6 Reserved. (Nonprofit Contractor Obligations)**

### **Article 11 General Provisions**

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

To City: San Francisco Municipal Transportation Agency  
Streets Division  
One South Van Ness Avenue, 3<sup>rd</sup> Floor

San Francisco, CA 94103  
Attn: Christian Kalinowski  
[Christian.Kalinowski@sfmta.com](mailto:Christian.Kalinowski@sfmta.com)

To Contractor: PGH Wong Engineering, Inc.  
182 2<sup>nd</sup> Street  
San Francisco, CA 94105  
Attn: Clifford Wong  
[Cliff@pghwong.com](mailto:Cliff@pghwong.com)

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

## **11.2 Compliance with Laws Requiring Access for People with Disabilities.**

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

**11.2.2** Contractor shall provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the information content and technology ("ICT") and/or Services provided under this Agreement.

### **11.2.3 Reserved (Web and Mobile Content Accessibility).**

**11.3 Incorporation of Recitals.** The matters recited in the Recitals section of this Agreement are a substantive portion of this Agreement and are hereby incorporated into and made part of this Agreement.

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all City records related to its formation, Contractor's performance of Services, and City's payment may be subject to the California Public Records Act, (California Government Code §7920.000 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 by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor must submit the SFMTA SBE Form 8 Declaration - Modification of Professional Services Contract and obtain prior CCO approval for any amendment, modification, supplement or change order.

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. City may elect, in its sole discretion, to participate in informal dispute resolution proceedings. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under Section 11.6.

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

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California without regard to conflict of law provisions. 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 Agreement including the Appendices, sets forth the entire agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

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

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) 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.** If the Appendices to this Agreement include any Contractor terms, Contractor agrees that in the event of any discrepancy, inconsistency, gap, ambiguity, or conflict in language between City's terms and Contractor's terms, City's terms shall take precedence. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

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

**11.15 No Third-Party Beneficiaries.** The representations, warranties and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

## **Article 12 SFMTA Specific Terms**

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

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

vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

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

## **Article 13 Data and Security**

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

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

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

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

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

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

**13.4.1 Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, 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 City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this

project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use, provided, however, that no City Data may be used by Contractor to train, modify or improve any Artificial Intelligence Systems or Models without City's prior written consent, which may be withheld or withdrawn at City's sole discretion. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

**13.4.2 Use of Generative Artificial Intelligence in Deliverables.** Contractor is prohibited from using Generative Artificial Intelligence in the development of Deliverables without City's prior written consent. Contractor represents and warrants to City that Deliverables will not be developed in a manner that conflicts with the City's rights in and to the Deliverables under Article 9, "Rights in Deliverables," or the City Data confidentiality and security requirements under Article 13, "Data and Security," of this Agreement.

**13.4.3 Disposition of City Data.** Except as otherwise provided for in this Agreement, upon the City's request, termination or expiration of this Agreement, or the expiration of any required document retention period or litigation hold, Contractor shall promptly, but in no event later than 30 Days, return all City Data given to or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall within 10 business days, securely dispose, clear, purge, and/or physically destroy, all copies of all City Data from its servers, files, hosted environments used in performance of this Agreement (including subcontractors' environments), work stations used to process or produce the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such secure disposal occurred within five business days of the disposal. 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 most current industry standard.

**13.5 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City. Notwithstanding any other provision of this agreement, Contractor shall retain ownership of all pre-existing intellectual property used in this agreement.

### **13.6 Loss or Unauthorized Access to City's Data; Security Breach Notification.**

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

**13.7 Cybersecurity Risk Assessment.** If a Cybersecurity Risk Assessment ("CRA") was required before entering the Agreement, Contractor must complete an annual CRA to demonstrate that it has maintained the data privacy and information security program required for City contractors. If Contractor does not satisfactorily complete an annual CRA, the City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement or exercise any of its other remedies hereunder. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

## **Article 14 Appendices**

**14.1 Appendices.** The following appendices ("Appendices" in the plural and each an "Appendix" in the singular) are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- A: Scope of Services
- B: Direct Hourly Labor Rates
- C: Overhead Rates
- D: Task Order Request Form
- E: FTA Requirements
- F: Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program for Professional and Technical Services Requirements for Architects, Engineers, Planners, Environmental Scientists and Other Professional Services Contracts
- G: Directory of Subcontractors

## **Article 15 MacBride and Signature**

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

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

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

|                                                          |                                                                                                                                                      |
|----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CITY</b>                                              | <b>CONTRACTOR</b>                                                                                                                                    |
| <b>San Francisco<br/>Municipal Transportation Agency</b> | <b>PGH Wong Engineering, Inc.</b>                                                                                                                    |
| <hr/>                                                    | <hr/>                                                                                                                                                |
| Julie Kirschbaum<br>Director of Transportation           | Peter Wong, P.E.<br><b>Principal-in-Charge and Founder,<br/>Chairman/CEO</b>                                                                         |
| Authorized By:                                           |                                                                                                                                                      |
| Municipal Transportation Agency Board of Directors       |                                                                                                                                                      |
| Resolution No: _____                                     | <u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u>                                                                         |
| Adopted: _____                                           |                                                                                                                                                      |
| Attest: _____<br>Secretary, to the Board                 | By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements. |
| Approved as to Form:                                     |                                                                                                                                                      |
| David Chiu<br>City Attorney                              |                                                                                                                                                      |
| By: _____<br>David F. Innis<br>Deputy City Attorney      | City Supplier Number: <b>0000003148</b>                                                                                                              |

## **Appendix A Scope of Services**

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

Contractor agrees to provide a broad range of specialized engineering services and staff to complete task orders issued by the SFMTA, either by direct assignment of its own personnel or through Subconsultants, including, but not limited to, initial planning and programming, specialized studies, design support, construction support, construction management, special inspection and material testing, start-up and commissioning, and project closeout. Staffing expectations will be provided on a task order basis but may be up to full-time to provide support for the SFMTA's project delivery division, which manages facilities, transit optimization, fixed trackway, and major corridors projects. The scope of work is categorized below. Note that the work may not be specific to its category and is not limited to the following:

#### **A. Planning**

1. Preparing and reviewing alternative analyses and developing overall design approaches.
2. Performing field surveys using licensed surveyors, including but not limited to topographic/control mapping, track/rail survey (inside and outside of tunnels), monument referencing, utility surveys, LiDAR, and ground penetrating radar (GPR).
3. Identifying and coordinating with utility providers to obtain existing utility information, assessing potential conflicts, facilitating relocations or design adjustments, and coordinating with utility owners to resolve utility conflicts with proposed improvements by relocating conflicting utilities.
4. Performing underground utility locating and potholing to identify as-built utilities, producing utility composite drawings, redesigning conflicts, acquiring additional real estate, and/or work-around.
5. Developing project management plans in accordance with FTA requirements.
6. Providing various FTA reports, as requested, including risk registers and financial updates.
7. Providing quality assurance oversight, audits, plans, training, and assistance per FTA requirements.

#### **B. Design**

1. Providing engineering design documents (drawings, specifications, calculations) as the Designer of Record for transit optimization, facilities, fixed guideway, and major corridor projects, including but not limited to the following disciplines:
  - a. Architectural & Civil – architecture, landscape architecture, civil, structural, geotechnical, tunnel;
  - b. Mechanical, Electrical & Plumbing (MEP) – mechanical, electrical, plumbing, fire protection, photometrics;

- c. Rail Systems & Transit Infrastructure – track, special track, signal, overhead contact system, electrification and power simulation studies.
2. Preparing or reviewing design and construction schedules, construction sequencing plans, and cost estimates (including bid items and descriptions), and performing schedule and phasing analyses to recommend project timelines and phasing strategies.
3. Performing or reviewing site investigations and functional analyses.
4. Performing geotechnical investigations and reports, including soil borings, sampling, coring, geophysical survey, laboratory testing, and recommendations on shallow and deep foundation design, seismic design criteria, total and differential settlement estimates, liquefaction evaluation, earthwork and site grading recommendations, and flexible and rigid pavement design criteria.
5. Identifying construction issues and constraints. Preparing and reviewing design packages (plans and specifications), including integration of all technical and contractual sections into one set of plans and specifications.
6. Conducting peer review to evaluate and address critical safety, technical, constructability, and operational issues, including assumptions, conclusions, and recommendations that are made by SFMTA staff or other consultants. Preparing peer review reports that summarize findings, conclusions, and recommendations.
7. Providing technical administrative support (e.g., file drawings, meeting minutes, and document control) using the SFMTA's existing document control system.
8. Incorporating the SFMTA's Quality Assurance/Quality Control (QA/QC) program into the design and construction packages.
9. Identifying special testing requirements, preparation testing, and start-up plans.
10. Providing engineering drafting support using AutoCAD Civil 3D, such as design and as-built drawings for various projects.
11. Performing preliminary and system hazard analyses, failure modes and effects analyses, single-point-of-failure analyses, hazard level classification, and safety certification of systems.
12. Providing systems engineering, including central control and communications system analysis, strategic analysis of the SFMTA's human and automated systems, systems integration, safety processes, configuration management, and related work.
13. Updating and standardizing project specifications to align with CSI Master Format standards to ensure consistency across all city departments.

#### C. Contracting

1. Assist in preparing procurement contracts for track, mechanical and electrical components, operating equipment, and long-lead items. The task may include performing product research, specifying products, and performing alternative analyses.
2. Conducting bid analyses by reviewing and evaluating project bids and/or proposals for completeness, compliance with project specifications, and cost reasonableness. This process will result in recommendations for contract award.

#### D. Construction

1. Providing design support during construction as supplementary staff to the Designer of Record or as the Designer of Record.
2. Providing engineering support during construction, including submittal and RFI review and response; preparing, reviewing, and negotiating change orders and proposed change orders; analyzing cost proposals and preparing cost estimates; evaluating schedules, recovery schedules, and fragnets; and providing other technical support.
3. Providing construction field engineering support (documentation and resolution of engineering issues including field investigations and evaluation of field conditions).
4. Providing construction management staff, such as a Resident Engineer (RE) and Assistant Resident Engineer (ARE) to oversee construction activities, ensure contract compliance, and manage day-to-day field operations. Staff will assist with documentation, inspections, and coordination among project stakeholders.
5. Providing day and night construction inspection support, including weekends.
6. Providing construction management support (e.g. claims analysis and negotiation plans, risk analysis, time impact analysis, and dispute review meeting documentation, such as position papers and backup documentation). Consultant is not expected to directly participate in claims negotiations for projects in construction that are primarily managed by the SFMTA.
7. Performing cost and schedule analyses of contracts, change orders, task orders, and contract modifications per FTA requirements; change order estimating and negotiation; schedule and delay analysis; constructability review; forensic cost and accounting analyses; and dispute analysis and review.
8. Performing special inspections as required by the City, including welding inspection with non-destructive testing (NDT), such as ultrasonic, magnetic particle, dye penetration, radiographic, and hardness testing, structural steel and high strength bolt (HSB) inspection, concrete inspection, grout inspection, soil testing, and fireproofing review. Testing work shall be conducted by certified inspectors and/or labs.
9. Performing laboratory material testing as required by the City, including soil, aggregate, steel, HSB, concrete cylinder and beams, grout cubes, hot mix asphalt, and fireproofing testing.
10. Providing Stormwater Pollution Prevention Plan (SWPPP) oversight, including regular inspections, reporting, and coordination with the contractor. This oversight work shall be conducted by a Qualified SWPPP Practitioner (QSP)/Qualified SWPPP Developer (QSD) certified staff. Frequency of inspection/reporting will be provided on a task order basis.
11. Performing system start-up and commissioning, including integration and pre-revenue “dry-run” testing, developing testing procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses. Performing this work may require coordination with SFMTA Operations and Maintenance teams.

12. Coordinating with contractors to select Dispute Review Board and administering resolution processes.
13. Providing construction safety consulting services, including:
  - a. Reviewing contractor's safety record, providing recommendations on the quality of the Contractor's safety documents, and recommending scores of Occupational Safety and Health Administration (OSHA) serious, repeat, and willful violation citations.
  - b. Evaluating contractor-submitted site-specific Health and Safety Plans (HASP) and Job Hazard Analysis (JHA) forms for SFMTA projects.
  - c. Performing general safety services, such as conducting site monitoring field visits, preparing inspection reports, and documenting inspection findings.

E. Track/Rail

1. Predicting, analyzing, preventing, and mitigating noise and vibration from transit operations and equipment, and designing and monitoring mitigation measures.
2. Performing annual ultrasonic rail testing per SFMTA's Standard Operating Procedure (SOP) entitled "Track Inspection and Maintenance" (see Appendix H) to identify internal rail defects.
3. Performing tunnel inspections per SFMTA's SOP entitled "Tunnel Structural Inspection Procedures" (see Appendix I), including reporting findings and recommending tunnel repairs and issue mitigation strategies.
4. Providing safety certification oversight and required documentation to obtain System Safety and Security Program per CPUC General Order (GO) 164-D, which requires transit agencies who are building and operating rail fixed guideway systems to establish a System Safety and Security Program. The scope of work may include the following:
  - a. Researching and drafting safety standards.
  - b. Reviewing the contractor's system safety programs and hazard analysis.
  - c. Developing Safety and Security Certification Plans.
  - d. Leading or participating in the Safety and Security Certification Review Committee (SSCRC).
  - e. Maintaining the Audit Conformance Checklists.
  - f. Reviewing the contractor's safety requirements.
  - g. Auditing implementation of safety requirements and hazard resolution.

F. Environmental

1. Assisting in the preparation of California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) documentation, including technical studies, environmental assessments, and public outreach.
2. Conducting environmental sampling and material testing, such as asbestos or lead paint, and preparing testing reports.
3. Conducting environmental borings for subsurface soil and groundwater samples, including permitting, drilling, sample collection, logging, and borehole closure.
4. Assisting in preparing and submitting Maher Ordinance documentation and related testing.

5. Preparing Phase 1 and, if necessary, Phase 2 Environmental Site Assessments (ESAs), including site inspections, historical research, sampling, laboratory analysis, and reports that document the findings and recommendations.

#### **G. Project Management**

1. Providing qualified project managers to serve as assistant project managers. The scope of work may include the following:
  - a. Monitoring and reviewing project scope to ensure project alignment with the original scope.
  - b. Preparing task order schedules with deliverable milestones.
  - c. Overseeing design and construction activities and coordinating multi-disciplinary technical staff across organization boundaries.
  - d. Reviewing change orders with SFMTA teams and developing implementation recommendations.
  - e. Monitoring and inspecting contractor work to ensure compliance with contract plans, specifications, and schedules. If the work is found not to comply, the consultant shall notify the SFMTA and assist in resolving issues with the contractors.
  - f. Preparing and monitoring the project budget and schedule and assist with obtaining funding, as necessary.
  - g. Preparing monthly project reports and schedule updates.
  - h. Assisting with or preparing agency project reports, management presentations on project status, and presentations to various outside agencies related to project status.
2. Providing advice to the SFMTA on alternative delivery projects as an Owner-Advisor or Owner Representative. Work may include:
  - a. Validating project scope, budget, and schedule through independent analysis and stakeholder coordination to ensure alignment with SFMTA's project goals and performance requirements.
  - b. Providing ongoing oversight of design and construction activities, including cost and schedule monitoring, change management, and construction observation to ensure projects remain on track and meet quality standards.
  - c. Supporting final inspections, system commissioning, staff training, and document turnover to ensure smooth transition to operations and project readiness for use.

## **2. 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.

**3. Department Liaison**

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be Christian Kalinowski.

**4. Services Provided by Attorneys**

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

**Appendix B**  
**Direct Hourly Labor Rates by Position or Class for Contractor and all Subcontractors**

| <b>Firm</b>                | <b>Employee Name<sup>4</sup></b>   | <b>Position/Classification</b>                | <b>Direct Hourly Rate</b> |
|----------------------------|------------------------------------|-----------------------------------------------|---------------------------|
| PGH Wong Engineering, Inc. | Clifford Wong, P.E. (KP)           | Project Manager (Key Staff)                   | \$225.00                  |
| PGH Wong Engineering, Inc. | Guy Nakano, P.E. (KP)              | Design Manager (Key Staff)                    | \$131.86                  |
| PGH Wong Engineering, Inc. | Andrew Fernandez, P.E., QSD/P (KP) | Lead Designer – Civil (Key Staff)             | \$100.59                  |
| PGH Wong Engineering, Inc. | Jeffrey Katz, P.E. (KP)            | Lead Designer – Systems (Key Staff)           | \$130.00                  |
| PGH Wong Engineering, Inc. | David Corona, P.E., ENV SP (KP)    | Lead Designer – Facilities (Key Staff)        | \$108.42                  |
| PGH Wong Engineering, Inc. | Timothy Findley (KP)               | Lead Cost Estimator (Key Staff)               | \$123.83                  |
| PGH Wong Engineering, Inc. | Robert Jacobs, PMP (KP)            | Lead Scheduler (Key Staff)                    | \$122.68                  |
| PGH Wong Engineering, Inc. | Courtney Gonzalez, P.E. (KP)       | Quality Manager (Key Staff)                   | \$139.68                  |
| PGH Wong Engineering, Inc. | Marcia Sagami (KP)                 | Planning Lead (Key Staff)                     | \$100.79                  |
| PGH Wong Engineering, Inc. | John Chen, P.E., PMP, CCM (KP)     | Construction Lead (Key Staff)                 | \$138.57                  |
| PGH Wong Engineering, Inc. | William Hearne, P.E. (KP)          | Track/Rail Lead (Key Staff)                   | \$106.64                  |
| PGH Wong Engineering, Inc. | Olga Perez (KP)                    | Contracting Lead (Key Staff)                  | \$108.34                  |
| PGH Wong Engineering, Inc. | Karim Aboud, P.E., PMP             | Communications                                | \$127.34                  |
| PGH Wong Engineering, Inc. | Jacob Anthony                      | Construction Inspection <sup>1</sup>          | \$74.80                   |
| PGH Wong Engineering, Inc. | Patrick Basuel, P.E., LEED AP      | Resident Engineer/Assistant Resident Engineer | \$108.51                  |
| PGH Wong Engineering, Inc. | Rodney Brandon, P.E.               | Signaling                                     | \$101.28                  |
| PGH Wong Engineering, Inc. | Leonid Bukhin                      | Project Management Support                    | \$126.18                  |
| PGH Wong Engineering, Inc. | Carol Chen, P.E.                   | Resident Engineer/Assistant Resident Engineer | \$117.17                  |
| PGH Wong Engineering, Inc. | Ruben Del Rio                      | Construction Inspection <sup>1</sup>          | \$86.18                   |
| PGH Wong Engineering, Inc. | Bhoopendra Dube                    | Construction Inspection <sup>1</sup>          | \$91.22                   |
| PGH Wong Engineering, Inc. | Patrick Gunn                       | Construction Inspection <sup>1</sup>          | \$83.82                   |
| PGH Wong Engineering, Inc. | Joseph Guttadauro, P.E.            | Project Management Support                    | \$89.13                   |
| PGH Wong Engineering, Inc. | Sabah (Joe) Haikal                 | Special Inspection <sup>1</sup>               | \$85.91                   |
| PGH Wong Engineering, Inc. | Shruti Harve, LEED AP              | BIM/CAD Specialist                            | \$108.81                  |
| PGH Wong Engineering, Inc. | Pojchana (Mimi) Hearne             | Document Control                              | \$57.23                   |
| PGH Wong Engineering, Inc. | Thomas (Tom) Hillesland, P.E.      | Project Management Support                    | \$106.79                  |

| <b>Firm</b>                | <b>Employee Name<sup>4</sup></b>     | <b>Position/Classification</b>                | <b>Direct Hourly Rate</b> |
|----------------------------|--------------------------------------|-----------------------------------------------|---------------------------|
| PGH Wong Engineering, Inc. | Benny Ho, P.E.                       | Project Management Support                    | \$98.29                   |
| PGH Wong Engineering, Inc. | Ardavan Jahed Motlagh, P.E., LEED GA | Project Management Support                    | \$89.36                   |
| PGH Wong Engineering, Inc. | Hosseini Kosari, P.Eng.              | Track Designer/Track Inspection <sup>1</sup>  | \$96.19                   |
| PGH Wong Engineering, Inc. | Steven Kyauk, P.E., DBIA, PMP        | Alternative Delivery Specialist               | \$143.11                  |
| PGH Wong Engineering, Inc. | Matthew Kyauk, P.E.                  | Project Management Support                    | \$104.86                  |
| PGH Wong Engineering, Inc. | Erik Lee, P.E.                       | Project Management Support                    | \$69.05                   |
| PGH Wong Engineering, Inc. | Kenji Murokami, R.A., LEED AP        | Architectural                                 | \$111.10                  |
| PGH Wong Engineering, Inc. | Rodney Phann, P.E.                   | Resident Engineer/Assistant Resident Engineer | \$97.34                   |
| PGH Wong Engineering, Inc. | Paul Price, P.E.                     | Resident Engineer/Assistant Resident Engineer | \$131.00                  |
| PGH Wong Engineering, Inc. | Manuel Quijano                       | Overhead Contact System                       | \$112.85                  |
| PGH Wong Engineering, Inc. | Robert Roman, P.E.                   | Resident Engineer/Assistant Resident Engineer | \$126.62                  |
| PGH Wong Engineering, Inc. | Miguel Sanchez                       | Resident Engineer/Assistant Resident Engineer | \$97.85                   |
| PGH Wong Engineering, Inc. | John Selin, P.E.                     | Civil                                         | \$140.00                  |
| PGH Wong Engineering, Inc. | Ryan Smith, PMP                      | Resident Engineer/Assistant Resident Engineer | \$108.21                  |
| PGH Wong Engineering, Inc. | Nathan Steward                       | Track Inspection <sup>1</sup>                 | \$83.75                   |
| PGH Wong Engineering, Inc. | Kyle Strickland                      | Project Controls Manager & FTA Liaison        | \$113.36                  |
| PGH Wong Engineering, Inc. | Jackson Tagal                        | Construction Inspection <sup>1</sup>          | \$87.55                   |
| PGH Wong Engineering, Inc. | Drew Thomas, P.E.                    | Resident Engineer/Assistant Resident Engineer | \$103.17                  |
| PGH Wong Engineering, Inc. | Scott Tollefson, P.E.                | Traction Power Substation                     | \$130.28                  |
| PGH Wong Engineering, Inc. | Michael Tran                         | Special Inspection <sup>1</sup>               | \$86.11                   |
| PGH Wong Engineering, Inc. | Nhi Tran, P.E.                       | Project Management Support                    | \$98.88                   |
| PGH Wong Engineering, Inc. | Mark Velasquez                       | Change Management                             | \$101.56                  |
| PGH Wong Engineering, Inc. | Richard Wells, P.E., LEED AP         | Mechanical/Plumbing                           | \$98.56                   |
| PGH Wong Engineering, Inc. | Lisa Whitman, P.E., LEED AP          | Project Management Support                    | \$111.37                  |

| <b>Firm</b>                                 | <b>Employee Name<sup>4</sup></b> | <b>Position/Classification</b>                           | <b>Direct Hourly Rate</b> |
|---------------------------------------------|----------------------------------|----------------------------------------------------------|---------------------------|
| PGH Wong Engineering, Inc.                  | Carlos Williams                  | Construction Inspection & Tunnel Inspection <sup>1</sup> | \$89.38                   |
| PGH Wong Engineering, Inc.                  | Peter Wong, P.E.                 | Principal-in-Charge                                      | \$280.00                  |
| PGH Wong Engineering, Inc.                  | Lydia Yeung, P.E.                | Track Designer                                           | \$90.34                   |
| PGH Wong Engineering, Inc.                  | Daruoosh Zadhoosh                | Tunnel Inspection <sup>1</sup>                           | \$87.73                   |
| AEW Engineering, Inc.                       | Kenneth Leung                    | Principal/ Professional Engineer                         | \$125.00                  |
| AEW Engineering, Inc.                       | James Medley                     | Senior Scientist                                         | \$65.63                   |
| AEW Engineering, Inc.                       | Ryder Musselman                  | Senior Geologist/Professional Geologist                  | \$65.63                   |
| AEW Engineering, Inc.                       | Julia Gandolfo                   | Staff Scientist                                          | \$40.85                   |
| AEW Engineering, Inc.                       | Jadon Chan                       | Geologist                                                | \$36.00                   |
| AEW Engineering, Inc.                       | Alexis Iwan                      | Project Administrator                                    | \$48.76                   |
| Cinquini & Passarino, Inc.                  | James Dickey                     | Principal Professional Land Surveyor                     | \$111.00                  |
| Cinquini & Passarino, Inc.                  | Anthony G. Cinquini              | Principal Professional Land Surveyor                     | \$111.00                  |
| Cinquini & Passarino, Inc.                  | Mark Andrilla                    | Professional Land Surveyor                               | \$66.57                   |
| Cinquini & Passarino, Inc.                  | Andrew Jetson-Diehl              | Professional Land Surveyor                               | \$53.84                   |
| Cinquini & Passarino, Inc.                  | Clayton Ferrari                  | Staff Surveyor II                                        | \$49.73                   |
| Cinquini & Passarino, Inc.                  | Sophia Furtado                   | Staff Surveyor I                                         | \$33.00                   |
| Cinquini & Passarino, Inc.                  | Christopher Silva                | Staff Surveyor I                                         | \$31.50                   |
| Cinquini & Passarino, Inc.                  | Jeffrey Meyer                    | Staff Survey Technician III                              | \$54.55                   |
| Cinquini & Passarino, Inc.                  | William Butler                   | Party Chief <sup>1</sup>                                 | \$65.79                   |
| Cinquini & Passarino, Inc.                  | Fabian Martinez                  | Chainman <sup>1</sup>                                    | \$54.28                   |
| Cornerstone Transportation Consulting, Inc. | Sunil Shah, CPE, LEED AP         | Cost Estimator                                           | \$82.56                   |
| Cornerstone Transportation Consulting, Inc. | Jenkin Hui, PE                   | Cost Estimator                                           | \$81.53                   |
| Cornerstone Transportation Consulting, Inc. | Walid Wahidi, PE, PMP, PMI-SP    | Scheduler                                                | \$103.00                  |
| Cornerstone Transportation Consulting, Inc. | Aijaz Mohammad Usmani            | Scheduler                                                | \$90.00                   |
| Cornerstone Transportation Consulting, Inc. | Mark Chan                        | System Engineer/Safety Certification Engineer            | \$91.31                   |
| Cornerstone Transportation Consulting, Inc. | Andres Alvarado, PMP             | Assistant Resident Engineer (ARE) <sup>1</sup>           | \$92.27                   |

| <b>Firm</b>                                 | <b>Employee Name<sup>4</sup></b> | <b>Position/Classification</b>                 | <b>Direct Hourly Rate</b> |
|---------------------------------------------|----------------------------------|------------------------------------------------|---------------------------|
| Cornerstone Transportation Consulting, Inc. | Carlos Mattos                    | Project Engineer / Field Engineer <sup>1</sup> | \$67.31                   |
| Cornerstone Transportation Consulting, Inc. | David Wan                        | Field Inspector <sup>1</sup>                   | \$79.92                   |
| Cornerstone Transportation Consulting, Inc. | Nicole Price                     | Administrative Assistant                       | \$40.07                   |
| Cornerstone Transportation Consulting, Inc. | Anna Tryc                        | Administrative Assistant                       | \$52.80                   |
| Cornerstone Transportation Consulting, Inc. | Diana Cervantes                  | Document Control                               | \$55.40                   |
| Cornerstone Transportation Consulting, Inc. | Teodor Rativo                    | CADD                                           | \$54.08                   |
| ENSCO Rail, Inc.                            | N/A                              | Mobilization <sup>2</sup>                      | \$34,450.00/test          |
| ENSCO Rail, Inc.                            | N/A                              | Track Inspection Service Days <sup>2</sup>     | \$10,400.00/day           |
| ENSCO Rail, Inc.                            | N/A                              | Railroad Delay Day <sup>2</sup>                | \$7,200.00/day            |
| ENSCO Rail, Inc.                            | N/A                              | Overtime Rate (over 8 hours) <sup>2</sup>      | \$1,100.00/hour           |
| F.W. Associates, Inc.                       | Edward Wong                      | Principal/Project Manager                      | \$92.31                   |
| F.W. Associates, Inc.                       | Garrett Wong                     | Project Engineer                               | \$63.35                   |
| F.W. Associates, Inc.                       | Kent Lin                         | Engineer                                       | \$55.00                   |
| Inspection Services Inc                     | Archie Richardson                | Group #2 Inspector <sup>1</sup>                | \$61.39                   |
| Inspection Services Inc                     | Andrew Falk                      | Group #2 Inspector <sup>1</sup>                | \$61.39                   |
| Keish Environmental, PC                     | Rachael Keish                    | Principal-in-Charge                            | \$120.57                  |
| Keish Environmental, PC                     | Sandeep Bhonsle                  | Project Manager/ Senior Stormwater Engineer    | \$104.00                  |
| Keish Environmental, PC                     | Hayden Kessenich                 | Stormwater Inspector                           | \$65.15                   |
| Keish Environmental, PC                     | Claire Anderson                  | Environmental Engineer                         | \$58.30                   |
| Keish Environmental, PC                     | Brendan Champlin                 | Environmental Specialist/Biologist             | \$51.75                   |
| Merrill Morris Partners, Inc.               | Cathy Merrill                    | Principal Landscape Architect                  | \$90.00                   |
| Merrill Morris Partners, Inc.               | John Potis                       | Sr. Associate Landscape Architect III          | \$58.00                   |
| Parametrix                                  | Peter (Pete) Ruscitti            | Sr Consultant                                  | \$101.51                  |
| Parametrix                                  | Tyler Sepulveda                  | Planner II                                     | \$45.68                   |
| Parametrix                                  | Shannon Ihlen                    | Business Manager/Project Controls              | \$65.53                   |
| Parametrix                                  | Jen Shriber                      | Planner IV                                     | \$56.55                   |
| Parikh Consultants, Inc.                    | Gary Parikh                      | Project Manager                                | \$113.88                  |

| <b>Firm</b>                          | <b>Employee Name<sup>4</sup></b> | <b>Position/Classification</b>                | <b>Direct Hourly Rate</b> |
|--------------------------------------|----------------------------------|-----------------------------------------------|---------------------------|
| Parikh Consultants, Inc.             | David Wang                       | Sr. Project Engineer/QA QC Manager            | \$87.56                   |
| Parikh Consultants, Inc.             | Frank (Yuan Kai) Wang            | Senior Engineer - II                          | \$86.37                   |
| Parikh Consultants, Inc.             | Mark McKee                       | Sr. Project Engineer/Geologist                | \$67.64                   |
| Parikh Consultants, Inc.             | Craig Langbein                   | Project Geologist/CEG                         | \$61.22                   |
| Parikh Consultants, Inc.             | Jan Davin Tengdyantono           | Staff Engineer                                | \$46.00                   |
| Parikh Consultants, Inc.             | Lakhwinder Bhangoo               | Field Engineer/Geologist                      | \$61.70                   |
| Parikh Consultants, Inc.             | Kathy Krol-Ramirez               | Project Control                               | \$87.08                   |
| Safework, Inc                        | Jose Romero (KP)                 | Safety Manager                                | \$84.19                   |
| Safework, Inc                        | Gordon White                     | Safety Manager                                | \$90.64                   |
| Shiralian Management Group Inc.      | Shahin Shiralian                 | Senior Scheduler & Claims Analyst             | \$120.00                  |
| Telamon Engineering Consultants, Inc | Mennor Chan                      | Principal/Survey Lead                         | \$90.41                   |
| Telamon Engineering Consultants, Inc | Doug Zuuring                     | Principal/Sr Project Manager                  | \$94.02                   |
| Telamon Engineering Consultants, Inc | Georgina Martinez                | Engineer III                                  | \$52.86                   |
| Telamon Engineering Consultants, Inc | David Robeck                     | Engineer II                                   | \$41.68                   |
| Telamon Engineering Consultants, Inc | Amr Elassi                       | Engineer I                                    | \$35.96                   |
| Telamon Engineering Consultants, Inc | Aaron Minsk                      | Office Surveyor                               | \$45.24                   |
| Telamon Engineering Consultants, Inc | Paul DeCosta                     | Field - Certified Chief of Party <sup>1</sup> | \$65.79                   |
| Telamon Engineering Consultants, Inc | Alyssa DeCosta                   | Field - Chief of Party <sup>1</sup>           | \$64.75                   |
| Telamon Engineering Consultants, Inc | Richard Horner                   | Field - Chief of Party <sup>1</sup>           | \$64.75                   |
| Telamon Engineering Consultants, Inc | Rudyard Vance                    | Field - Chainman/Rodman <sup>1</sup>          | \$54.28                   |
| Telamon Engineering Consultants, Inc | Zachary Waldman                  | Field - Chainman/Rodman <sup>1</sup>          | \$54.28                   |
| Turner Engineering Corporation       | Andy Pattantyus, W2              | Safety and Certification Engineering Manager  | \$100.00                  |
| Turner Engineering Corporation       | Bob May, IC                      | Senior Rail Systems Engineering Manager       | \$110.00                  |

| <b>Firm</b>                    | <b>Employee Name<sup>4</sup></b> | <b>Position/Classification</b>                               | <b>Direct Hourly Rate</b> |
|--------------------------------|----------------------------------|--------------------------------------------------------------|---------------------------|
| Turner Engineering Corporation | Brad Banks, IC                   | Senior Systems Engineer                                      | \$208.66                  |
| Turner Engineering Corporation | Brandon Whang, W2                | Senior Cybersecurity Engineer                                | \$60.00                   |
| Turner Engineering Corporation | Eli Fernald, W2                  | Rail Systems Engineering Director                            | \$125.00                  |
| Turner Engineering Corporation | Erick Garcia, W2                 | Start Up and Commissioning Director, Senior Systems Engineer | \$80.00                   |
| Turner Engineering Corporation | Frank Nicholas, W2               | Start up and Commissioning, Senior Systems Engineer          | \$75.00                   |
| Turner Engineering Corporation | Gary Thompson, W2                | Utility Coordination, Senior Systems Engineer                | \$70.00                   |
| Turner Engineering Corporation | Jesse Holland, W2                | Start Up and Commissioning Manager, Senior Systems Engineer  | \$60.00                   |
| Turner Engineering Corporation | Neil Shaw, IC                    | Senior Noise and Vibration Engineer                          | \$135.00                  |
| Turner Engineering Corporation | Ryan McKinley, IC                | Senior Certification Oversight Director                      | \$170.00                  |
| Turner Engineering Corporation | Steve Lawrence, W2               | System Assurance Director                                    | \$105.00                  |
| Turner Engineering Corporation | Yumi Chapman, W2                 | Senior Software Engineer                                     | \$60.00                   |
| UltraSystems Environmental     | Betsy A. Lindsay                 | Project Director                                             | \$72.12                   |
| UltraSystems Environmental     | Hina Gupta                       | Senior Project Manager                                       | \$57.93                   |
| UltraSystems Environmental     | Michael Milroy                   | Deputy Project Manager                                       | \$45.18                   |
| UltraSystems Environmental     | Billye Breckenridge              | Senior Environmental Planner                                 | \$42.04                   |
| UltraSystems Environmental     | Ryan Nordness                    | Senior Planner                                               | \$42.30                   |
| UltraSystems Environmental     | Steve Borjeson                   | Senior Planner                                               | \$46.59                   |
| UltraSystems Environmental     | Madison Brown                    | Assistant Planner                                            | \$27.81                   |
| UltraSystems Environmental     | Michelle Tollett                 | Senior Biologist II                                          | \$53.28                   |
| UltraSystems Environmental     | Allison Carver                   | Senior Biologist II                                          | \$43.66                   |
| UltraSystems Environmental     | Matthew Sutton                   | Staff Biologist I                                            | \$37.90                   |
| UltraSystems Environmental     | Hugo Flores                      | Staff Biologist I                                            | \$39.37                   |
| UltraSystems Environmental     | Taylor Zigelbaum                 | Staff Biologist I                                            | \$36.34                   |
| UltraSystems Environmental     | Stephen Perkins                  | Staff Biologist I                                            | \$29.40                   |

| <b>Firm</b>                | <b>Employee Name<sup>4</sup></b> | <b>Position/Classification</b> | <b>Direct Hourly Rate</b> |
|----------------------------|----------------------------------|--------------------------------|---------------------------|
| UltraSystems Environmental | Robert Thompson                  | Staff Biologist I              | \$37.00                   |
| UltraSystems Environmental | Megan Doukakis                   | Senior Principal Archaeologist | \$35.00                   |
| UltraSystems Environmental | Claudi Ochoa                     | Arch/Paleo Specialist          | \$30.00                   |
| UltraSystems Environmental | Stephen Chesterman               | Principal GIS Consultant       | \$52.50                   |
| UltraSystems Environmental | Andrew Soto                      | Assistant Planner              | \$31.25                   |
| UltraSystems Environmental | Michael Rogozen                  | Principal Engineer             | \$49.14                   |
| UltraSystems Environmental | Patricia Haigh                   | Sr. Scientist Engineer         | \$38.46                   |
| UltraSystems Environmental | Isha Shah <sup>3</sup>           | Scientist/Engineer             | \$38.46                   |
| UltraSystems Environmental | Amir Ayati                       | Scientist/Engineer             | \$34.65                   |
| UltraSystems Environmental | Erik Segura                      | Scientist/Engineer             | \$28.00                   |
| Wilson Ihrig/RWDI USA LLC  | Derek L. Watry                   | Technical Director             | \$91.05                   |
| Wilson Ihrig/RWDI USA LLC  | Gary Glickman                    | Technical Director             | \$91.05                   |
| Wilson Ihrig/RWDI USA LLC  | Sarah Kaddatz                    | Senior Acoustician             | \$63.24                   |
| Wilson Ihrig/RWDI USA LLC  | Fletcher Pratt                   | Acoustician                    | \$48.41                   |
| Wilson Ihrig/RWDI USA LLC  | Charysse Redwood                 | Acoustician                    | \$41.20                   |
| Wilson Ihrig/RWDI USA LLC  | Lauren Garrett                   | Project Coordinator            | \$32.21                   |

**Notes:**

- (1) Position may be subject to Department of Industrial Relations (DIR) prevailing wage requirements. Certified payroll must be submitted in LCPTracker.
- (2) Fixed lump sum rate, which is subject to refinement based on the negotiated scope of work under future task orders. Additional direct labor, overhead rates, and profit not permitted.
- (3) Overhead and Profit are not permitted.
- (4) Employees designated KP are subject to the Key Personnel requirements of Section 4.4.

**Appendix C**  
**Schedule of Overhead Rates for Contractor and all Subcontractors**

| <b>Firm</b>                                 | <b>Overhead Rate (%)</b>             |
|---------------------------------------------|--------------------------------------|
| PGH Wong Engineering, Inc.                  | 123.14%                              |
| AEW Engineering, Inc.                       | 124.00%                              |
| Cinquini & Passarino, Inc.                  | 174.29%                              |
| Cornerstone Transportation Consulting, Inc. | 130.30%                              |
| ENSCO Rail, Inc.                            | N/A <sup>1</sup>                     |
| F.W. Associates, Inc.                       | 123.30%                              |
| Inspection Services Inc                     | 159.36%                              |
| Keish Environmental, PC                     | 149.50%                              |
| Merrill Morris Partners, Inc.               | 207.08%                              |
| Parametrix                                  | 174.43%                              |
| Parikh Consultants, Inc.                    | 177.25%                              |
| Safework, Inc.                              | 113.01%                              |
| Shiralian Management Group Inc.             | 101.92%                              |
| Telamon Engineering Consultants, Inc        | 221.97%                              |
| Turner Engineering Corporation              | 78.74% (IC staff) 145.42% (W2 staff) |
| UltraSystems Environmental                  | 159.87%                              |
| Wilson Ihrig/RWDI USA LLC                   | 193.00%                              |

**Note:**

(1) Fully burdened rates provided in lieu of FAR Overhead Rate.

## Appendix D

### TASK ORDER FORM

#### SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Contract Title: As-Needed Specialized Engineering Services  
Project Title: \_\_\_\_\_

Contract No.: CS-  
Project No.: M000.0

TASK ORDER FORM-TASK ORDER NO. ### ##

|                                                                                                                                    |              |                                             |             |
|------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------------------------|-------------|
| Task Title: _____ Services                                                                                                         |              | Date Initiated: [RFP Date]                  |             |
| <input type="checkbox"/> New Task Order                                                                                            |              | <input type="checkbox"/> Revised Task Order |             |
| <b>Work to be Performed:</b>                                                                                                       |              |                                             |             |
| Provide [type] services for the [project] as described in the attached Consultant's final proposal dated [date of final proposal]. |              |                                             |             |
| <b>Schedule:</b>                                                                                                                   |              |                                             |             |
| Duration: <u>(#)</u> [Months/Years] ( <u>    </u> Days)                                                                            |              |                                             |             |
| Total Agreed Amount: \$                                                                                                            |              | Liquidated Damages (if applicable): \$      |             |
| <b>Funding Information:</b>                                                                                                        |              |                                             |             |
| Project ID                                                                                                                         | Authority ID | Dept ID                                     | Activity ID |
|                                                                                                                                    |              |                                             |             |
| <b>Deliverables</b>                                                                                                                |              |                                             |             |
| Description                                                                                                                        |              | Date Required                               |             |
| 1. Refer to Consultant's final proposal dated _____.                                                                               |              | TBD                                         |             |
| <b>APPROVALS</b>                                                                                                                   |              |                                             |             |
| Submitted _____                                                                                                                    |              | Date _____                                  |             |
| Project Manager                                                                                                                    |              |                                             |             |
| Approved _____                                                                                                                     |              | Date _____                                  |             |
| Engineering                                                                                                                        |              |                                             |             |
| Approved _____                                                                                                                     |              | Date _____                                  |             |
| Program Delivery & Construction Management                                                                                         |              |                                             |             |
| Approved _____                                                                                                                     |              | Date _____                                  |             |
| Planning and Project Delivery                                                                                                      |              |                                             |             |
| Approved _____                                                                                                                     |              | Date _____                                  |             |
| Section Lead, Contract Administration                                                                                              |              |                                             |             |
| Approved _____                                                                                                                     |              | Date _____                                  |             |
| Manager, Contract Administration                                                                                                   |              |                                             |             |
| Approved _____                                                                                                                     |              | Date _____                                  |             |
| Director of Contracts and Procurement                                                                                              |              |                                             |             |

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

**Contract Title:** As-Needed Specialized Engineering Services  
**Project Title:** \_\_\_\_\_

**Contract No.:** CS-  
**Project No.:** M000.0

**TASK ORDER FORM-TASK ORDER NO. ###-##**

**Proposed Staff and Budget:**

| Task(s)                                  |  | Fixed Price<br>(including Profit) |   |
|------------------------------------------|--|-----------------------------------|---|
| Task/Sub-Task XX - [Task/Sub-Task title] |  | \$                                | - |
| Task/Sub-Task XX - [Task/Sub-Task title] |  | \$                                | - |
| <b>Total Lump Sum Cost</b>               |  | \$                                | - |

  

| Name                                          | Hours | Direct Hourly<br>Rate | Cost    |
|-----------------------------------------------|-------|-----------------------|---------|
| <b>Prime: [Name of Prime]</b>                 |       |                       |         |
| [name], [classification]                      |       |                       | \$ -    |
| [name], [classification]                      |       |                       | \$ -    |
| [name], [classification]                      |       |                       | \$ -    |
| <b>Total</b>                                  |       |                       | \$ -    |
| <b>Overhead</b>                               | %     |                       | #VALUE! |
|                                               |       |                       |         |
| <b>Subconsultant: [Name of Subconsultant]</b> |       |                       |         |
| [name], [classification]                      |       |                       | \$ -    |
| [name], [classification]                      |       |                       | \$ -    |
| <b>Total</b>                                  |       |                       | \$ -    |
| <b>Overhead</b>                               | %     |                       | #VALUE! |
|                                               |       |                       |         |
| <b>Total Direct Labor</b>                     |       |                       | \$ -    |
| <b>Total Overhead</b>                         |       |                       | #VALUE! |
| <b>Fixed Fee/Profit</b>                       |       |                       |         |
| <b>Other Direct Costs (ODC)</b>               |       |                       |         |
|                                               |       |                       |         |
| <b>Total Amount of Task Order</b>             |       |                       | #VALUE! |

**Payment Method:**

[e.g. To be paid as lump sum after acceptance of all Deliverables for each task.]

**Retention:** \_\_\_\_% (if applicable)

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

**Contract Title:** As-Needed Specialized Engineering Services  
**Project Title:** \_\_\_\_\_

**Contract No.:** CS-  
**Project No.:** M000.0

**TASK ORDER FORM-TASK ORDER NO. ### ##**

|                                                             |             |
|-------------------------------------------------------------|-------------|
| <b>Approved by [Name of Prime] (Consultant):</b>            |             |
|                                                             |             |
| <b>Signature</b><br>[name]<br><b>Project Manager</b>        | <b>Date</b> |
|                                                             |             |
| <b>Signature</b><br>[name]<br>[Title i.e. President/VP/CEO] | <b>Date</b> |
|                                                             |             |

## Appendix E

### FTA REQUIREMENTS FOR PERSONAL/PROFESSIONAL SERVICES CONTRACTS

#### I. DEFINITIONS

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

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

## **II. FEDERAL CHANGES**

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

## **III. ACCESS TO RECORDS**

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

## **IV. DEBARMENT AND SUSPENSION**

- A.** The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally

funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

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

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

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

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

#### **VI. NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

- A.** If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the City, which will promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the City is located. The Contractor must include an equivalent provision in its sub agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
- B.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- C.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement between the FTA and the City, and any Amendments thereto, or the

Federal Government's administration or enforcement of federal laws, regulations, and requirements.

- D. Additional Notice to U.S. DOT Inspector General.** The Contractor must promptly notify the City, which will promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the City is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement with the City involving a principal, officer, employee, agent, or Third Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

## **VII. CIVIL RIGHTS**

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

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

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

## **VIII. NONDISCRIMINATION ON THE BASIS OF DISABILITY**

The Contractor agrees to comply with the following federal prohibitions against discrimination based on disability:

### **A. Federal laws, including:**

1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
2. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., Titles I, II, and III, which requires that accessible facilities and services be made available to individuals with disabilities;
3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
5. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities

**B. Federal regulations and guidance, including:**

1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
2. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38;
4. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39;
5. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
6. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
7. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
8. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, subpart F;
9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
10. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
11. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
12. Other applicable federal civil rights and nondiscrimination regulations and guidance..

**IX. SBE/DBE ASSURANCES**

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

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

to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

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

- A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.
- B.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C.** The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

- A. Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
  - 1. Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such

data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

- 2. Federal License.** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:

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

- 6. Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
- 7. Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- C. Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- D. Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

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

- A. Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar Day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages** – The City and County of San Francisco shall upon its own action or upon written request of an authorized

representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

### **XIII. ENERGY CONSERVATION REQUIREMENTS**

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

### **XIV. SEISMIC SAFETY REQUIREMENTS**

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

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

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

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

- A.** Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor

agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

## **XVII. PRIVACY**

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

## **XVIII. DRUG AND ALCOHOL TESTING**

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

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

See Section 8.1 of Agreement Terms and Conditions.

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

See Section 8.2 of Agreement Terms and Conditions.

## **XXI. BUY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials (*excluding* cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) used in FTA-funded projects are produced in the United States, unless a waiver has been

granted by FTA or the product is subject to a general waiver. “Construction materials” include an article, material, or supply that is or consists primarily of:

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

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

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

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

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

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

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

### **XXIV. RECYCLED PRODUCTS**

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

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

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

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.
- C. Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle

complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

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

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

## **XXVII. FLY AMERICA**

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

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

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

- 1. General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's Project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.
- 2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities** – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
- 3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas** – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

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

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

**XXX. TEXTING WHILE DRIVING; DISTRACTED DRIVING**

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

**XXXI. SEAT BELT USE**

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

**XXXII. DISPUTE RESOLUTION PROCEDURE**

See Section 11.6 of the Agreement Terms and Conditions.

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

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

**XXXIV. PROMPT PAYMENT**

- A. In accordance with SFMTA’s SBE Program, no later than three Days from the date of Contractor’s receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors. Unless the prime Contractor notifies the CCO in writing within 10 business days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subcontractor. Within five business days of such payment,

Contractor shall confirm that all subs have been paid via the B2GNow System. Failure to submit all required payment information into the B2GNow System may result in the suspension of future progress payments to Contractors.

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

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

As provided by 49 U.S.C. § 5325(k):

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

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

**B.** Contractor also assures that its subcontractor will:

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

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

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

**Appendix F**

**Small Business Enterprise (SBE) Program under SFMTA's  
Disadvantaged Business Enterprise (DBE) Program for Professional  
and Technical Services  
Requirements for Architects, Engineers, Planners, Environmental Scientists and  
Other Professional Services Contracts**

**Appendix G**  
**Directory of Subcontractors**

| <b>Firm Name</b>                            | <b>Contact<br/>(Name, Email Address, &amp;<br/>Phone Number)</b>                                                       | <b>Address</b>                                                | <b>SBE</b> |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|------------|
| AEW Engineering, Inc.                       | Kenneth Leung<br><a href="mailto:KLeung@aeweng.com">KLeung@aeweng.com</a><br>(415) 495-8400                            | 111 Maiden Lane, Suite 500<br>San Francisco, CA 94108         | X          |
| Cinquini & Passarino, Inc.                  | Jim Dickey<br><a href="mailto:jdickey@cinquinipassarino.com">jdickey@cinquinipassarino.com</a><br>(707) 542-6268       | 1360 North Dutton Avenue<br>Suite 150<br>Santa Rosa, CA 95401 | X          |
| Cornerstone Transportation Consulting, Inc. | Ming Ng<br><a href="mailto:mng@cornerstoneconcilium.com">mng@cornerstoneconcilium.com</a><br>(415) 705-7800 x 234      | 241 5th Street<br>San Francisco, CA 94103                     | X          |
| ENSCO Rail, Inc.                            | Shane Swearingen<br><a href="mailto:swearingen.shane@ensco.com">swearingen.shane@ensco.com</a><br>(703) 321-4661       | 2600 Park Tower Drive<br>Suite #100<br>Vienna, VA 22180       |            |
| F.W. Associates, Inc.                       | Edward Wong<br><a href="mailto:ewong@fwa-inc.com">ewong@fwa-inc.com</a><br>(510) 763-7475                              | 68 – 12th Street, Suite 300<br>San Francisco, CA 94103        | X          |
| Inspection Services Inc                     | Tobin Gaut<br><a href="mailto:tgaut@inspectionsservices.net">tgaut@inspectionsservices.net</a><br>(510) 900-2100       | 1798 University Avenue<br>Berkeley, CA 94703                  | X          |
| Keish Environmental, PC                     | Rachael Keish<br><a href="mailto:rachael@keish.com">rachael@keish.com</a><br>(408) 359-7248                            | 2033 Gateway Pl, Ste 556<br>San Jose, CA 95110                | X          |
| Merrill Morris Partners, Inc.               | Cathy Merrill<br><a href="mailto:cmerrill@merrill-morris.com">cmerrill@merrill-morris.com</a><br>(415) 291-8960        | 249 Front Street<br>San Francisco, CA 94111                   | X          |
| Parametrix, Inc.                            | Peter (Pete) Ruscitti<br><a href="mailto:pruscitti@parametrix.com">pruscitti@parametrix.com</a><br>(619) 658-5891      | 6001 Shellmound Street<br>Suite 500<br>Emeryville, CA 94608   |            |
| Parikh Consultants, Inc.                    | Frank Y. Wang<br><a href="mailto:fwang@parikhnet.com">fwang@parikhnet.com</a><br>(408) 452-9000                        | 1497 N Milpitas Boulevard<br>Milpitas, CA 95035               | X          |
| Safework, Inc                               | Tina Moschetti<br><a href="mailto:Tina.Moschetti@safeworkinc.com">Tina.Moschetti@safeworkinc.com</a><br>(818) 716-0384 | 800 Wilshire Blvd, Suite 1525<br>Los Angeles, CA 90017        | X          |

|                                      |                                                                                                                      |                                                      |   |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|---|
| Shiralian Management Group Inc.      | Shahin Shiralian<br><a href="mailto:shahinshiralian@gmail.com">shahinshiralian@gmail.com</a><br>(415) 407-4804       | 1601 Posen Avenue<br>Berkeley, CA 94707              |   |
| Telamon Engineering Consultants, Inc | Mennor Chan<br><a href="mailto:Mennor.C@telamoninc.com">Mennor.C@telamoninc.com</a><br>(415) 837-1336                | 855 Folsom St, Suite 142<br>San Francisco CA, 94107  | X |
| Turner Engineering Corporation       | David Turner<br><a href="mailto:dturner@turner-engineering.com">dturner@turner-engineering.com</a><br>(310) 915-7601 | 2006 Glyndon Avenue<br>Venice, CA 90291              | X |
| UltraSystems Environmental           | Betsy A. Lindsay<br><a href="mailto:blindsay@ultrasystems.com">blindsay@ultrasystems.com</a><br>(949) 788-4900       | 16431 Scientific Way<br>Irvine, CA 92618             | X |
| Wilson Ihrig/RWDI USA LLC            | Derek L. Watry<br><a href="mailto:dwatry@wilsonihrig.com">dwatry@wilsonihrig.com</a><br>(510) 658-6719               | 5900 Hollis Street, Suite T1<br>Emeryville, CA 94608 |   |