

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.6**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Capital Programs & Construction

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute San Francisco Municipal Transportation Agency Contract No. CS-174, Professional Project Management and Construction Management Support Services for Van Ness Corridor Transit Improvement Project, with HNTB Corporation, for a total contract amount not to exceed \$5,701,475, and a term not to exceed three years.

**SUMMARY:**

- Contract No. CS-174 is for provision of professional project management and construction support services to assist Capital Programs and Construction Division in the implementation of the Van Ness Transit Improvement Project.
- On March 6, 2017, the Director of Transportation notified the SFMTA Board of Directors that he had authorized issuance of a Request for Proposals (RFP) for Contract No. CS-174, Professional Project Management and Construction Management Support Services for Van Ness Corridor Transit Improvement Project.
- The SFMTA and received written proposals from four firms.
- A Technical Evaluation Team reviewed the proposals and selected HNTB Corporation as the highest-ranked proposer.
- The total contract amount is not to exceed \$5,701,475 and a term not to exceed three years.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract No. CS-174

**APPROVALS:**

	<b>DATE</b>
DIRECTOR  _____	1/25/2018 _____
SECRETARY  _____	1/25/2018 _____

**ASSIGNED SFMTAB CALENDAR DATE:** February 6, 2018

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### **PURPOSE**

The purpose of this calendar item is to authorize the Director of Transportation to execute San Francisco Municipal Transportation Agency Contract No. CS-174, Professional Project Management and Construction Management Support Services for Van Ness Corridor Transit Improvement Project, with HNTB Corporation, for a total contract amount not to exceed \$5,701,475, and a term not to exceed three years.

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

The Contract CS-174 would assist in the implementation of the following goals, objectives and initiatives in the SFMTA Strategic Plan:

Goal 2: Make transit, walking, bicycling, taxi, ridesharing and carsharing the most attractive and preferred means of travel

Objective 2.1 Improve customer service & communications

Objective 2.2 Improve transit performance

Goal 3: Improve the environment and quality of life in San Francisco

Objective 3.4 Deliver services efficiently

Goal 4: Create a collaborative environment to support delivery of outstanding service

Objective 4.4 Improve relationships and partnerships with our stakeholders

Transit First Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety
4. Transit priority improvements, such as designated transit lanes and streets and improved signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.
5. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.

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6. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.
7. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway
8. Parking policies for areas well served by public transit shall be designed to encourage travel by public transit and alternative transportation

## **DESCRIPTION**

### **Background:**

The Van Ness Corridor Transit Improvement Project, formally known as Van Ness Bus Rapid Transit-BRT Project (Project), will implement the first BRT service in San Francisco, which will improve transit reliability for the 47 and 49 Muni routes and provide reliable transit connections to transfer routes. The transit service and infrastructure changes are expected to reduce transit travel times by over 30 percent and increase ridership by about 33 percent.

Van Ness Avenue is a high-injury corridor; to improve safety, the Project will install pedestrian countdown timers, pedestrian bulb-outs, and eliminate the majority of left turns that currently exist along the corridor. In addition, the Project will replace the 100-year-old sewer and water system along the length of the corridor as well as selected sections of the auxiliary water supply system. The Project will enhance the urban design of Van Ness Avenue.

The Project is being constructed through the use of the Construction Manager/General Contractor (CM/GC) project delivery method. The CM/CG delivery process is bringing the contractor in the design phase for consultation in developing the plans and specifications for the project to minimize any potential constructability issues during the construction phase. This will minimize any potential project delays and cost creep of the project. The CM/CG for the Project is Walsh Construction. The primary objective of this professional services contract is to obtain resources and expertise to supplement SFMTA staff in managing the CM/GC in delivering this major capital project. These services include providing daily project management support services to the SFMTA Project Manager, and construction management services including claims engineering services.

### **Scope of Contract:**

The scope of services provided under this contract includes the following tasks:

1. Maintain and analyze Project schedule
2. Provide risk analysis and management services
3. Provide quality assurance/quality control (QA/QC) assistance for offsite fabricated materials
4. Provide construction management support services

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5. Maintain and update the Project Management Plan and the Construction Management Plan
6. Provide technical writing support
7. Provide office engineering support
8. Provide construction inspector support
9. Provide independent cost estimating services
10. Provide claims analysis and engineering services

**Selection Process:**

On March 6, 2017, the Director of Transportation notified the SFMTA Board of Directors that he had authorized an RFP for Contract No. CS-174. The SFMTA advertised the RFP on March 13, 2017. The SFMTA received written proposals on May 2, 2017, from the following four firms:

1. PMA Consultants LLC (PMA)
2. Auriga Corporation
3. HNTB Corporation (HNTB)
4. PGH Wong Engineering, Inc. (PGHWong)

A Technical Evaluation Team (TET) consisting of members of the SFMTA and San Francisco Public Works evaluated the proposals from the four firms and shortlisted PMA, HNTB, and PGH Wong. After conducting oral interviews of the three shortlisted firms, the TET selected HNTB as the highest-ranked proposer.

The original Independent cost estimate for the work was \$5.4 million at the time the RFP was advertised. HNTB's original cost proposal for the work was \$7,658,163. SFMTA staff negotiated the final contract scope of services and price of \$5,701,475, which was determined to be fair and reasonable for the work.

**Consultant Team Organization:**

Following is a listing of subconsultants providing services under management of HNTB for this contract:

- Acumen Building Enterprise (SBE/DBE) - scheduling services
- TBD consultants (SBE/DBE) - cost estimating
- Ghirardelli Associates (SBE/DBE) - construction inspection/management services
- Avila & Associates (SBE/DBE) - utility inspection
- Chaves & Associates (SBE/DBE) - office engineering support
- Cooper Puga Management (SBE/DBE) - cost estimating/claims analysis support
- Professional Services Industries – Quality Assurance/Quality Control for offsite fabricated materials and special inspections

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## **STAKEHOLDER ENGAGEMENT**

There are ongoing construction public outreach activities conducted for business communities, property owners, general public, community centers and public officials etc as noted below:

- Weekly 14-day Construction Forecast (web, email, text message)
- Weekly “Weekend Release” press release
- Twice-weekly Community Drop-in Office Hours
- 72-hour noticing for night work
- Monthly “Meet the Expert” speaker series
- Monthly briefing to public officials
- Quarterly newsletters
- Business engagement program
- Community engagement activities

These outreach activities will continue through the construction of the Project.

## **ALTERNATIVES CONSIDERED**

None. This contract will be used when specialized expertise is not available in-house or when Project demand exceeds staff availability

## **FUNDING IMPACT**

This contract will be funded through the existing approved budget for the Project for an amount not to exceed \$5,701,475.

## **ENVIRONMENTAL REVIEW**

On December 14, 2017, the SFMTA, under authority delegated by the Planning Department, determined that the Van Ness Project Management and Construction Support Services Contract No. CS-174 is not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

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

On August 21, 2017, the Civil Service Commission approved the contract pursuant to Personal Services Contract (PSC) request No. 40149-16/17.

The Contract Compliance Office has determined that HNTB has committed to meeting the 20% Small Business Enterprise participation and 8% Woman-owned Disadvantaged Business Enterprise

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participation goals established for this contract. The Contract Compliance Office also determined that HTB has committed to meeting the Non-discrimination Equal Employment requirements of the contract and is in compliance with the City's Equal Benefits ordinance.

The City Attorney Office has reviewed this Calendar Item.

No other approvals are required to award this Contract.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute San Francisco Municipal Transportation Agency Contract No. CS-174, Professional Project Management and Construction Management Support Services for Van Ness Corridor Transit Improvement Project, with HNTB Corporation, for a total contract amount not to exceed \$5,701,475, and a term not to exceed three years

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The SFMTA Capital Programs & Construction Division requires technical and professional project management and construction management support services to supplement SFMTA staff to complete the Van Ness Corridor Transit Improvement Project; and

WHEREAS, On March 6, 2017, the Director of Transportation notified the SFMTA Board of Directors that he had authorized a Request for Proposals (RFP) for Contract No. CS-174, Professional Project Management and Construction Management Support Services for Van Ness Corridor Transit Improvement Project; and,

WHEREAS, The SFMTA advertised the RFP on March 13, 2017, and on May 2, 2017, received four written proposals from PMA Consultants LLC, Auriga Corporation, HNTB Corporation, and PGH Wong Engineering, Inc.; and,

WHEREAS, A Technical Evaluation Team made up of members from the SFMTA and San Francisco Public Works determined HNTB Corporation to be the highest-ranked proposer; and,

WHEREAS, SFMTA's Contract Compliance Office has determined that HNTB has made a commitment to meet the 20 percent Small Business Enterprise participation goal and the eight percent woman-owned Disadvantaged Business Enterprise participation goal for this contract; and,

WHEREAS, This contract will be funded through existing approved budgets for the Van Ness Corridor Transit Improvement Project; and,

WHEREAS, On December 14, 2017, the SFMTA, under authority delegated by the Planning Department, determined that the Van Ness Project Management and Construction Support Services Contract No. CS-174 is not a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

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

WHEREAS, On August 21, 2017, the Civil Service Commission approved the contract pursuant to Personal Services Contract (PSC) request No. 40149-16/17; now, therefore, be it,

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute SFMTA Contract No. CS-174, Professional Project Management and Construction Management Support Services for Van Ness Corridor Transit Improvement Project, with HNTB Corporation, for a total amount not to exceed \$5,701,475, and a term not to exceed three years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of January 16, 2018.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**Agreement Between**

**The City and County of San Francisco**

**Municipal Transportation Agency**

**And**

**HNTB Corporation**

**For**

**Professional Project Management and Construction  
Management Support Services for the Van Ness Corridor  
Transit Improvement Project**

**CONTRACT NO. CS-174**

**(CCO-17-1436)**

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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  
HNTB Corporation  
Contract No. CS-174**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, in the City and County of San Francisco, State of California, by and between HNTB Corporation (Contractor) and the City and County of San Francisco, acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

**A.** The SFMTA wishes the services of a consulting firm to provide project management and construction management support for the Van Ness Improvement Project (Project).

**B.** The SFMTA issued a Request for Proposals (RFP) on March 13, 2017, and selected Contractor as the highest-qualified scorer pursuant to the RFP.

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

**D.** Approval for this Agreement was obtained when the Civil Service Commission approved Contract No. 40149-16/17 on August 21, 2017.

Now, THEREFORE, the parties agree as follows:

**Article 1 Definitions**

The following definitions apply to this Agreement:

**1.1 Acceptance:** The formal written acceptance by the City and County of San Francisco that all work, or a specific portion thereof, under the contract has been satisfactorily completed.

**1.2 A/E Services:** The professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered or certified to provide those services.

**1.3 Agreement or Contract:** This Agreement and all referenced Appendices to this Agreement, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference.

**1.4 Award:** Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute the Contract with the selected proposer, and, if applicable, approval of the Contract by the Board of Supervisors.

**1.5 Certification:** Certification by the Controller that funds necessary to make payments as required under the contract are available in accordance with the City's Charter.

**1.6 City:** The City and County of San Francisco, a municipal corporation, acting by and through the SFMTA.

**1.7 CMD:** The Contract Monitoring Division of the City.

**1.8 CP&C:** The Capital Programs and Construction Division of the SFMTA.

**1.9 Contract Compliance Office (CCO):** The SFMTA office that administers compliance with federal regulations governing the Disadvantaged Business Enterprises/Equal Employment and Non-Discrimination Programs, in addition to the SFMTA Small Business Enterprise Program and the City's Local Business Enterprise/Non-Discrimination Program.

**1.10 Contract Modification or Amendment:** A written order, issued by the City to Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

**1.11 Contractor or Consultant:** HNTB Corporation

**1.12 Controller:** Controller of the City.

**1.13 Cost-plus-Fixed-Fee.** A method compensating Consultant for Work performed under the Agreement by which the SFMTA reimburses Consultant its costs for performing the Work and also pays a negotiated fee that is fixed at the inception of the Contract. The Fixed Fee does not vary with actual costs, but may be adjusted as a result of changes in the work to be performed under the Contract.

**1.14 Days:** Unless otherwise designated, the word "Days" refers to working days of the City, which are generally Monday through Friday, excluding holidays. The use of the term "days," "working days" or "business days" in this Agreement shall be synonymous.

**1.15 Deliverables; Submittals:** Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

**1.16 Director:** The Director of Transportation of the SFMTA or his/her designee.

**1.17 Effective Date:** The date on which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

**1.18 Engineer:** The SFMTA engineer assigned to the Contract or his/her designated agent.

**1.19 Federal Transit Administration (FTA):** An operating administration of the U.S. Department of Transportation.

**1.20 Final Acceptance:** The formal written acceptance by the Director that all Deliverables for the Contract have been satisfactorily completed and accepted. This will authorize the Project Manager to release the final payment, including all retention, to the Contractor.

**1.21 Fixed Fee or Profit:** The fee paid to Consultant that is Consultant's profit and shall also cover any costs or expenses borne by Consultant that are not otherwise compensable under this Agreement.

**1.22 Key Personnel:** Those participants on a project who contribute in a substantive, measurable way to the project's development.

**1.23 Mandatory City Requirements:** 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 on Contractor.

**1.24 Notice To Proceed (NTP):** A letter from the SFMTA advising the Consultant of the day when work is to commence under the Contract,

**1.25 Party(ies):** The City and Contractor, either collectively or individually.

**1.26 Program Management/Implementation Plan.** A detailed plan prepared by Consultant setting out its approach to deliver the Services for the Project, including personnel assignments, schedules, cost controls, reporting procedures, and other elements required by the SFMTA.

**1.27 Project Manager:** The designated SFMTA employee who will assume all duties and responsibilities to manage the Contract, including overseeing administration of the Contract, review and approval of invoices, review and approval of all contractual actions, and Contract interpretation.

**1.28 Proposal:** The Contractor's written response/submittal to the RFP.

**1.29 Request for Proposals; RFP:** The Request for Proposals for As-Needed Engineering Services issued by the SFMTA on December 28, 2015.

**1.30 San Francisco Municipal Railway (Muni):** The public transit system of San Francisco, under the jurisdiction of the SFMTA.

**1.31 San Francisco Municipal Transportation Agency (the SFMTA or Agency):** The agency of the City with jurisdiction over surface transportation in San Francisco, as provided in San Francisco Charter Article VIII A.

**1.32 Services:** The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services,

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

**1.33 Small Business Enterprise or SBE:** A for-profit, small business concern with a three-year average gross revenue not exceeding current SBA size standards appropriate for its type of work and is either verified eligible by the SFMTA or certified under any of the following programs: the State of California's Small Business Program, the City and County of San Francisco's LBE Program, or the California Unified Certification Program.

**1.34 Subconsultant or Subcontractor:** Any firm under contract to the Consultant for services under this Agreement.

**1.35 Walsh:** Walsh Construction Company II, LLC, the Construction Manager/General Contractor for the Project.

**1.36 Work Order:** A written directive from the Project Manager directing Consultant to perform a specific portion of work.

**1.37 Work Product:** All reports, studies, data, specifications, design criteria, graphs, tape recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been accumulated or generated by the Consultant or its Subconsultants, in connection with the services performed under this Agreement, whether completed or in process.

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

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

## **Article 3 Financial Matters**

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

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

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

### **3.3 Compensation.**

#### **3.3.1 Total Amount**

(a) The total amount of compensation under this Agreement for all Services performed by Consultant, shall not exceed Five Million, Seven Hundred One Thousand, Four Hundred Seventy-Five Dollars (\$5,701,475), which includes lump sum payment items, and Cost-Plus-Fixed Fee payment items. The Cost-Plus-Fixed-Fee includes a total Fixed Fee of Two Hundred Ninety-Six Thousand, Three Hundred Dollars (\$296,300). A summary of tasks and the costs attributed to each task, as well as a breakdown of the Fixed Fee for each task, is set forth in Appendix B (Calculation of Charges).

(b) The total amount listed above is inclusive of all direct labor costs, other direct costs, indirect costs and Fixed Fee for all Services performed under this Agreement subject only to authorized adjustments as specifically provided in this Agreement. In the event the Consultant incurs costs in excess of the total amount, adjusted as provided herein, the Consultant shall pay such excess from its own funds, the SFMTA shall not be required to pay any part of such excess, and the Consultant shall have no claim against the SFMTA on account thereof.

#### **3.3.2 Fixed Fee.**

(a) The Fixed Fee stated above will be allocated to the Consultant and Subconsultants. Payment of the full Fixed Fee is not guaranteed; to receive the full Fixed Fee, Consultant shall fully perform all Services described in this Agreement in compliance with the standards of performance described herein.

(b) It is understood and agreed that the Fixed Fee is a fixed amount that cannot be exceeded because of any differences between the Total Amount and actual costs of performing the work required by this Agreement, and in no event shall payments to the Consultant exceed said Total Amount, adjusted as provided herein. The Fixed Fee is based on earned value to the Project, and bears no relation to value of costs incurred by Consultant or reimbursed by the SFMTA. The SFMTA may approve an increase in the Fixed Fee only if such increase is required due to an increase in the Services or to additional work that increases the Services. The Fixed Fee shall not be increased for Consultant's additional level of effort to complete the Services. It is further understood and agreed that the Fixed Fee is only due and

payable for Project work for which SFMTA has given notice to proceed and for which the Consultant has satisfactorily completed.

(c) The Fixed Fee will be prorated and paid monthly in proportion to the Services satisfactorily completed. The proportion of work completed shall be documented by invoices and shall be determined by a ratio of the total costs to date compared to the Total Amount, less profit. A payment for an individual month shall include that approved portion of the fixed fee allocable to the Project work satisfactorily completed during said month and not previously paid. Any portion of the fixed fee not previously paid in the monthly payments shall be included in the final payment. The method of proration may be adjusted by SFMTA to reflect deletions or amendments in the Project work that are approved as herein described.

(d) If the Services are reduced, that reduction shall be memorialized in an amendment to the Agreement, and the Fixed Fee 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, as measured by the value of that work set out in Appendix B to this Agreement.

### **3.3.3 Payment Methods**

(a) **Lump Sum Payments.** For those Deliverables to be paid as a lump sum (as designated on Appendix B), the SFMTA will make payment after acceptance of the Deliverable and receipt of an acceptable invoice.

(b) **Cost-Plus-Fixed-Fee Payments.** The SFMTA will pay for as-needed tasks (as described in Section 4.10 below) on a Cost-Plus-Fixed-Fee basis. Costs will consist of direct labor, overhead, and other direct costs (ODC), as described in Section 3.3.4 below.

### **3.3.4 Method of Calculating Costs.**

(a) **Direct Labor Rates.** The direct labor rates in Appendix C shall be fixed at that level until 12 months after the Effective Date of this Agreement. Direct Salary Rates in Appendix C may be adjusted 12 months after the Effective Date of this Agreement and no more frequently than annually thereafter. Individual salary rates may be increased by no more than three percent annually with prior written approval of the CP&C Director. The SFMTA will generally not approve any individual rate increase of over three percent unless presented with compelling evidence of necessity based on specialized expertise, market conditions, or special conditions related to recruitment or retention. Should the Consultant seek a rate increase, the Consultant must present an updated Appendix C for the SFMTA's approval prior to adjustment of rates on its progress payment requests.

(b) **Overhead.** The Consultant's compensation under this Agreement will be based on and shall not exceed the combined overhead and salary burden rates as shown on the Schedule of Overhead Rates attached as Appendix D. The rates in Appendix D may be adjusted annually with prior written approval from the CP&C Director. The Consultant's and

Subconsultants' combined overhead and salary burden rates are subject to audit in compliance with Federal requirements.

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

**(c) Other Direct Costs (ODC).**

**(i) Reimbursable Costs.** The Consultant acknowledges that it is familiar with the provisions set forth in 2 CFR Part 200 ("Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards"). Consultant understands and acknowledges that the City will not pay the Consultant for costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with 2 CFR Part 200, and that all payments under this Agreement are subject to audit and adjustment.

**(ii) Out-of-Pocket Expenses.** The SFMTA will reimburse Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and Subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses must comply with the Business Travel Guidelines issued by the City Controller's Office, which may be found at Section 4.8 of the following link: [http://sfcontroller.org/sites/default/files/FileCenter/Documents/6828-CON%20Accounting%20Policies%20%20Procedures\\_2016-02-17%20FINAL.pdf](http://sfcontroller.org/sites/default/files/FileCenter/Documents/6828-CON%20Accounting%20Policies%20%20Procedures_2016-02-17%20FINAL.pdf). Such expenses must be pre-approved by the Project Manager.

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

**3.3.5 Use of Public Transit.** San Francisco is a transit-first city, and the SFMTA encourages Consultant and Subconsultants to use public transit in performance of its services to the maximum extent possible, including travel to and from airports. The SFMTA will closely review the Consultant's requests for reimbursement of travel expenses. The City reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

### **3.4 Labor Standards – Prevailing Wages.**

**3.4.1 Covered Services.** Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the provisions of Section 6.22(e) [Prevailing Wages] of the Administrative Code (collectively, Covered Services). The provisions of Section 6.22(e) of the Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

**3.4.2 Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the prevailing wage rates as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement (OLSE) and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>. Contractor agrees that it shall pay not less than the prevailing wage rates, as fixed and determined by the Board, to all workers employed by Contractor who perform Covered Services under this Agreement. Contractor further agrees as follows:

**3.4.3 Subcontract Requirements.** As required by Section 6.22(e)(5) of the Administrative Code, Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services under said subcontract or other arrangement not less than the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

**3.4.4 Posted Notices.** As required by Section 1771.4 of the California Labor Code, Contractor shall post job site notices prescribed by the California Department of Industrial Relations ("DIR") at all job sites where Covered Services are to be performed.

**3.4.5 Payroll Records.** As required by Section 6.22(e)(6) of the Administrative Code and Section 1776 of the California Labor Code, Contractor shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her 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 undertake the performance of 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 the City and its authorized representatives and the DIR.

**3.4.6 Certified Payrolls.** Certified payrolls shall be prepared pursuant to Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of subcontractors, who performed labor in connection with Covered Services. Contractor and each subcontractor performing Covered Services shall submit certified payrolls to the City and to the DIR electronically. Contractor shall submit payrolls to the City via the reporting system selected by the City. The DIR will specify how to submit certified payrolls to it. The City will provide basic training in the use of the reporting system at a scheduled training session. Contractor and all subcontractors that will perform Covered Services must attend the training session. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

**3.4.7 Compliance Monitoring.** Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or the OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the Administrative Code. Steps and actions include but are not limited to requirements that: (A) the Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards imposed on Public Works Contractor by the Charter and Chapter 6 of the San Francisco Administrative Code; (B) the Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (C) the contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (D) the Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (E) that the Labor Standards Enforcement Officer may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter on Public Works Contractors. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

**3.4.8 Remedies.** Should Contractor, or any subcontractor who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Contract, subcontract or other arrangement 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 Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. The 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.

**3.5 Payment.** Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediate preceding month. Compensation shall be made for Services identified in the invoice that the SFMTA's designee, in his or her sole discretion, concludes has been satisfactorily performed. The City will make payment within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. Payment shall be made by City to Contractor at the address specified in Section 3.5.5, or in such alternate manner as the Parties have mutually agreed upon in writing. In no event shall City be liable for interest or late charges for any late payments.

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

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

**3.5.3 Invoice Format.** Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. The Consultant shall submit invoices for all allowable charges incurred in the performance of the Agreement. No invoice shall be rendered if the total work done under this Agreement since the last invoice amounts to less than \$1,500, except that an invoice may be submitted if three months have elapsed since the last invoice was submitted. No more than one invoice shall be submitted in a month. The Consultant shall submit invoices that include the

following information (items c. through g. shall only be required for work performed on a Cost-plus-Fixed-Fee basis):

- a. Contract Number
- b. Description of the work performed or services rendered
- c. Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced
- d. Overhead costs
- e. Other direct costs
- f. Subconsultant costs supported by invoice itemization in the same format as described here
- g. Fixed Fee for current invoice period and amount of Fixed Fee as of date of invoice. Fixed Fee will be calculated as a prorated portion of the total fixed fee.
- h. Total costs.
- i. SBE utilization report (SFMTA Form 6)
- j. Certified payroll records substantiating all labor charges for Consultant and all Subconsultants shown on the invoice

**3.5.4 Progress Payment Form.** The Controller is not authorized to pay invoices submitted by Consultant prior to Consultant's submission of the SFMTA Progress Payment Form. If the Progress Payment Form is not submitted with Consultant's invoice, the Controller will notify the SFMTA and Consultant of the omission. If Consultant's failure to provide the SFMTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20 percent of the payment due pursuant to that invoice until the SFMTA Progress Payment Form is provided. .

### **3.5.5 Getting Paid for Goods and/or Services from the City.**

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

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

### **3.6 Grant-Funded Contracts.**

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

**3.6.2 FTA Requirements.** The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Appendix E are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

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

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

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

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in Appendix A (Scope of Services). Officers and employees of the City

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

**4.2 Priority of Documents.** All requirements of the RFP and the representations made in the Consultant's Proposal that are not in conflict with provisions of this Agreement are incorporated by reference and made an integral part of this Agreement as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or Consultant's Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP or Proposal shall control. Documents listed as Appendices to this Agreement are incorporated by reference as though fully set forth herein.

**4.3 Information and Data.** The Consultant shall request in writing any information and data it will require to perform its Services. The Consultant shall identify the timing and priority for which this information and data will be required in its draft Program Management/Implementation Plan. The Consultant and Agency shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Plan.

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

**4.5 Key Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Consultant's authorized subcontractors) to perform the Services. The City, at its sole discretion, may issue a written directive to Contractor to remove or replace any personnel performing work under this Agreement. Within five business days of Contractor's receipt of such directive, and in accordance with Contractor policy and procedure, Contractor shall provide confirmation of compliance, or propose replacement personnel for the City's approval. All personnel, including those assigned at City's request, must be supervised by Consultant. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement. The Consultant agrees that the following Key Personnel shall be committed and assigned to provide services under this Agreement to the level required by SFMTA for the term of the Agreement and shall also be staffed at the local Consultant offices within the San Francisco Bay Area for all such time:

Devang Desai, HNTB Corporation  
Chuck Morganson, HNTB Corporation  
Tim Bessette, HNTB Corporation  
David Folkman-Moore, Acumen Building Enterprise  
Stephen O'Neill, Cooper Pugeda Management  
Sayna Durst, Ghirardelli Associates  
Sam Evison, TBD Consultants

Consultant shall advise SFMTA immediately any time one of the Key Personnel deviates from its committed role or time on the Project (e.g., is assigned to another project). SFMTA may in turn require Consultant to provide a remedy and/or corrective actions for such deviations. The SFMTA, through the Project Manager, reserves the right to approve any substitution of Key Personnel (or non-Key Personnel).

#### **4.6 Work Orders.**

**4.6.1 General.** The SFMTA will assign the various tasks listed in Appendix A on a periodic basis through Work Orders. Each Work Order will identify the work to be performed, the cost of the work, the schedule, and any required Deliverables.

**4.6.2** The following shall not be considered out-of-scope work, but shall be considered incidental to the “Scope of Services” outlined in Appendix A, and Consultant shall receive no additional compensation for performing said work:

(a) All work required to comply with local, State and federal codes, regulations and standards, as interpreted by local, State or federal agencies having approval or sign-off authority for the CSP, as such codes, regulations and standards may be amended during the Term of this Agreement..

(b) All work related to addressing review comments and/or incorporating appropriate review comments into deliverable documents.

(c) Unless specifically stated in Appendix A as excluded from the “Scope of Services,” all implied work required to complete the technical portion of the Work that is consistent with the intent of the requirements of this Agreement, the RFP and the Proposal, are included in the Scope of Services and are essential to achieve the purposes of this Agreement.

(d) All work required to correct deficiencies and errors, including work related to resubmittals of work products that are reasonably determined by the City to be incomplete or inadequate.

**4.6.3** If the Consultant proceeds to do work that it perceives to be outside the Scope of Services without first obtaining City’s written approval in accordance with the above procedures, regardless of the amount or value of the work, the City shall have no obligation to reimburse Consultant for the work thus performed. Eagerness to respond to the City’s comments or concerns, expediency, schedule constraints will not be acceptable reasons to proceed with out-of scope work without City’s prior written approval.

**4.7 Current Workload and Available Resources.** The Consultant covenants that its current workload and the workload of its Subconsultants will not affect the commencement and the progress of the work under this Agreement. The Consultant shall have all the necessary professional, technical and support personnel, including those of the Subconsultants, available, ready and mobilized to perform actual work within two weeks of NTP. Consultant shall provide copies of its subcontracts with Subconsultants to the SFMTA on request.

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

**4.9 Reproduction of Work Product.** The Consultant shall arrange and provide for all printing (or other required reproduction) of Work Product.

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

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

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

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

**4.12.1 Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not

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

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

**4.13 Assignment.** The services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors.

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

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

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

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

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

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

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

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each claim, and \$2,000,000 aggregate. The policy shall provide coverage for the following risks:

(i) 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;

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

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

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

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

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

**5.1.3** All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties." All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

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

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

**5.1.6** Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements 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.

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

**5.1.8** If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and

County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

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

**5.2.1 Limitations.** No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

**5.2.2 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.

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

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "TOTAL 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 for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

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

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

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

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

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

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

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

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

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

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

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

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

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

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

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

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

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10 percent 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 (i) Contractor can establish, to the satisfaction of SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and (ii) that the profit allowed shall in no event exceed five percent of such cost.

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

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

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

**8.1.5** In arriving at the amount due to Contractor under this Section, SFMTA may deduct: (i) all payments previously made by SFMTA for Services covered by Contractor's final invoice; (ii) any claim which 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 SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

**8.1.6** SFMTA's payment obligation under this Section shall survive termination of this Agreement.

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

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

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

- |           |   |
|-----------|---|
| 3.8       | Submitting False Claims.  |
| 4.14      | Assignment  |
| Article 5 | Insurance and Indemnity   |
| Article 7 | Payment of Taxes  |
| 10.4      | Nondisclosure of Private, Proprietary or Confidential Information |
| 10.10     | Alcohol and Drug-Free Workplace                                   |

## 11.10 Compliance with Laws

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

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

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

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

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

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

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

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

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

- 3.5.1 Payment Limited to Satisfactory Services
- 3.6 Grant-Funded Contracts - Disallowance
- 3.7 Audit and Inspection of Records
- 3.8 Submitting False Claims
- Article 5 Insurance and Indemnity
- 6.1 Liability of City
- 6.3 Liability for Incidental and Consequential Damages
- Article 7 Payment of Taxes
- 8.1.6 Payment Obligation
- 9.1 Ownership of Results
- 9.2 Works for Hire
- 10.4 Nondisclosure of Private, Proprietary or Confidential Information
- 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

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

**Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by

Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

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

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

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

### **10.2 Conflict of Interest.**

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

**10.2.2** During the term of this Agreement and for a period of three years after completion of this Agreement, the Contractor agrees that it will not supply as a prime contractor, subcontractor at any tier, or consultant to a supplier to the SFMTA, any product, item or major component of an item or product, which was the subject of the specifications and/or work statements furnished under this Contract. The Contractor shall, within 15 days after the effective date of this Contract, provide, in writing to the Project Manager, a representation that all employees, agents and Subcontractors involved in the performance of this Contract have been informed of the provisions of this clause. Any Subcontractor that performs any work relative to

this Contract shall be subject to this clause. The Contractor agrees to place in each Subcontract affected by these provisions the necessary language contained in this clause.

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

**10.4 Nondisclosure of Private, Proprietary or Confidential Information.**

**10.4.1** 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.

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

**10.5 Nondiscrimination Requirements**

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

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

**10.6 Small Business Enterprise/Disadvantaged Enterprise Program.**

**10.6.1 General.** The SFMTA is committed to a Small Business Enterprise/Disadvantaged Enterprise (SBE/DBE) Program for the participation of SBEs in

contracting opportunities. The Consultant must comply with all applicable federal regulations regarding DBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to DBEs performing work under this Agreement. More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

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

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

**10.7 Minimum Compensation Ordinance.** Contractor agrees to pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** Contractor voluntarily agrees to comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

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

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

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

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. 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 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

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

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

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

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

**10.14.2** The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of

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

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

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

**10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)**

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

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

**Article 11 General Provisions**

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

To City: San Francisco Municipal Transportation Agency  
SFMTA Capital Programs and Construction Division  
One South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
Attn: Peter Gabancho, P.E.  
[peter.gabancho@sfmta.com](mailto:peter.gabancho@sfmta.com)

To Contractor: HNTB Corporation  
49 Stevenson Street, Suite 600  
San Francisco, CA 94105  
Attn: Devang Desai, P.E.  
[d-desai@HNTB.com](mailto:d-desai@HNTB.com)

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

**11.2 Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including

but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

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

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

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

### **11.6 Dispute Resolution Procedure.**

**11.6.1 Notice of Dispute** For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within 15 days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 14 days of delivery of the notice. The notice and response shall contain the following: (i) a statement of the party's position and a summary of the arguments supporting that position, and (ii) any evidence supporting the party's position.

**11.6.2 Resolution of Disputes.** Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Project Manager and Consultant's shall be decided in writing by the SFMTA Director of Capital Program and Construction. The decision shall be administratively final and conclusive unless within 10 days from the date of such decision, the Consultant mails or otherwise furnishes a written appeal to the Director of Transportation or his/her designee. In connection with such an appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transportation shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the SFMTA Project Manager's decision as to a particular dispute is final.

**11.6.3 No Cessation of Work.** Pending final resolution of a dispute hereunder, the Consultant shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the SFMTA Project Manager.

**11.6.4 Alternative Dispute Resolution.** If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

**11.6.5 Claims for Additional Compensation.** For disputes involving a claim for additional compensation, parties involved shall attempt to resolve such disputes expediently and in good faith so as not to impact the performance or schedule of the work. Under no circumstances shall the Consultant or its Subconsultants stop work due to an unresolved dispute.

**11.6.6 Disputes among Consultant Partners.** The resolution of any contractual disputes related to Consultant's Joint Venture or Association partners (if any) shall be the sole responsibility of the Consultant. Each party of the Joint Venture or Association shall resolve all such disputes within 30 calendar days of when the dispute first surfaced so as not to impact the performance of the contract with the City. Any such disputes that impact the Project and that are left unresolved for more than one month shall be cause for the City to withhold and/or reduce invoice payments to the Consultant's Joint Venture or Association firms until the dispute is resolved.

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

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

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

**11.9 Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

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

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or

unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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

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

## **Article 12 MacBride Principles And Signature**

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

## **Article 13 Large Vehicle Driver Safety Training Requirements**

**13.1 Training Requirements.** 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.

**13.2 Liquidated Damages.** 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.

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

<p><b>CITY</b></p> <p><b>San Francisco Municipal Transportation Agency</b></p> <hr/> <p>Edward D. Reiskin Director of Transportation</p> <p>Approved as to Form:</p> <p><b>AUTHORIZED BY:</b></p> <p><b>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</b></p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____                    Roberta Boomer, Secretary</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____                Robin M. Reitzes                Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p><b>HNTB Corporation</b></p> <hr/> <p>Darlene K. Gee, P.E. Vice President</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 52523</p> <p>Federal Employer ID Number: 43-1623092</p>
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**Appendices**

- A: Scope of Services
- B. Calculation of Charges
- C. Direct Labor Rates by Position or Class for Consultant and all Subconsultants
- D. Schedule of Overhead Rates for Consultant and all Subconsultants
- E. FTA Provisions for Personal Service Contracts
- F. SBE/DBE Provisions
- G. Directory of Subconsultants

**APPENDIX A**  
**Scope of Services**

**I. Description of Services.**

**Task 1 Maintain and Analyze Project Schedule:**

- A. Provide Project schedule analysis for time extensions related to change orders and claims on as-needed basis. Address concerns raised by the FTA Project Management Oversight Consultant (PMOC) on the current Project schedule.

Deliverables:

1. Time extension analysis resulting from Walsh's request for change orders and/or claims
  2. Supporting documentation to address PMOC concerns and comments
- B. Review monthly schedule update provided by Walsh as described below.
1. Review Project schedule and analyze schedule updates/changes
  2. Review construction scheduling submittals and identify any anomalies or manipulations
  3. Generate back-up to support schedule analyses/recommendations made
  4. Update the existing Project schedule by entering actual completion dates and showing schedule slip
  5. Attend monthly meetings with Walsh to resolve comments
  6. Document all findings in a schedule review and prepare for transmittal to Walsh for review and corrective action.
  7. Notify the SFMTA of any critical changes made by Walsh

Deliverables:

1. Provide comments to Walsh's monthly update.

Note:

1. After monthly meeting with Walsh, and if no further changes are needed to be made to the monthly schedule update comments, the Deliverable will be deemed accepted.

Duration: 36 months

**Task 2 Risk Management:**

- A. Provide support to the SFMTA during PMO and FTA reviews; prepare other presentations, as required.

Deliverables:

1. Provide presentations/documentation as requested by the SFMTA

- B. Update Risk Management Report four times a year and address the concerns raised by the FTA PMOC on continued implementation of a Risk and Contingency Management Program that is consistent with FTA requirements for ongoing identification, assessment analysis, mitigation, monitoring and controlling of risks. This task includes, but is not limited to, the following activities/duties:
1. Reconcile estimate, schedule, and risks consistent with FTA Risk Management Guidelines.
  2. Update the Risk and Contingency Management Program, with specific actions and owners of risks identified, including the identification of the five highest Project risks.
  3. Prepare contingency draw-down curve

Deliverables:

1. Four updated Risk Management Reports per year

Note:

1. Consultant shall provide a draft of the Deliverable. The SFMTA will provide comments within two weeks after delivery of the draft report. If the SFMTA has no comments to the draft, the Deliverable will be deemed accepted.

Duration: 36 months

**Task 3 Quality Assurance/Quality Control (QA/QC) Assistance for Offsite Fabricated Materials:**

- A. Provide assistance to the SFMTA throughout the Project, as directed by the SFMTA. This may include coordination with the laboratory providing the testing services and coordination with Caltrans personnel. It is currently anticipated that the following matters will need to be reviewed:
1. Welding QC program
  2. Testing facility QC program
  3. Walsh's and fabricators' QC programs
    - a. Prior to material fabrication (e.g., poles, pole attachments, pole anchoring systems, traffic signal cabinets), Consultant shall provide the following services:
      - i. Assist SFMTA with preparing for and performing prefabrication meetings, as needed, for each fabrication facility where offsite fabrication will be performed.
      - ii. Discuss and coordinate with key stakeholders such as Caltrans, Walsh, and City representatives on testing protocol and the amount of non-destructive testing (NDT) that will be required.
      - iii. Develop process for resolution of questions (RFI or other process) to ensure compliance with Caltrans requirements, if such a process is not already in place.

- iv. Develop a submittals process (e.g., shop drawings, NDT reports, daily fabrication reports, welding reports) to ensure compliance with Caltrans requirements, if such a process is not already in place.

During fabrication, Consultant shall visit the site, as needed, to perform QA for NDT and address quality issues that may arise. There will be up to 15 site visits to fabrication site(s) and 60 tests of either high-strength fasteners or anchor bolts over an 18-month period. For NDT, Consultant shall anticipate that the following tasks may be required:

1. Electroliers: welding NDT (e.g., visual testing (VT); paint (thickness and adhesions).
2. Sign posts: welding NDT (e.g., magnetic particle testing (MT), VT, ultrasonic testing (UT)); paint (thickness and adhesions).
3. Oversight review of Walsh's submittal of QC documents pertaining to offsite production at fabrication facilities.
4. Assist SFMTA in resolution of fabrication issues.
5. Sampling and testing of high-strength fasteners. Testing lab to be accredited by American Association of State Highway and Transportation Officials (AASHTO) for the testing performed.
6. Sampling and testing of anchor bolts. Test lab to be AASHTO-accredited for the testing performed.

After fabrication, Consultant shall assist the City with final review of submittals and questions/RFI's that are related to fabrication.

Deliverables:

1. Provide review comments for QC documentation reviewed
2. Process for resolution of questions (if required)
3. Submittals process (if required)
4. Each inspection and test performed under this task must be memorialized in a detailed report with supporting documentation (e.g., non-compliance reports or NCRs, inspection reports, test reports, submittal review comments). These reports shall be submitted no later than five business days after each inspection/test.

Duration: First 18 months of Agreement

**Task 4 Construction Management:**

- A. Consultant shall provide one full-time employee collocated at the Project office to perform the following:
  1. Supervise professional and technical engineering personnel, including Subconsultants, in the preparation of contract documents for a wide variety of work related to the Project's construction; ensure that the contract documents comply with federal, regional and local requirements.
  2. Assist with development or updates to project Operations and Maintenance Plan, as requested

3. Support Testing and Start-Up Plan, as requested
4. Prepare safety and security checklists and procedures
5. Monitor Walsh's compliance with all contract provisions.
6. Assist SFMTA in negotiating and preparing contract modifications; help resolve any claims and disputes that may arise.
7. Assist the SFMTA with the supervision and monitoring of the inspection of a wide variety of construction-related issues.
8. Provide construction support to ensure compliance with engineering designs, drawings and specifications, and project objectives; prepare cost estimates of labor, equipment, and materials; perform engineering calculations.
9. Analyze and solve complex engineering and process-related problems, which may involve water/wastewater construction, traffic systems, and civil, chemical (environmental/sanitary), structural, electrical, and mechanical issues.
10. Write, review, and/or approve project correspondence, reports and other related documents, which will be kept and stored in the Project file.
11. Conduct meetings and make presentations to agency staff and the public.

Deliverables:

1. Final Safety and Security Checklist and Procedures
  2. Other relevant documentation prepared as described above
- B. On an as-needed basis, provide other construction management services, including, but not limited to, the following:
1. Contract administration
  2. SharePoint technical support
  3. Safety Manual support
  4. Other construction management-related services.

Duration: 36 months

**Task 5 Project Management Plan (PMP) and Construction Management Plan (CMP)**

**Support:**

- A. Review the current PMP and CMP used by the SFMTA and assist with their ongoing evolution, management, and as-needed reporting/Project updates. Provide Project PMP and CMP additions, edits, and updates on an annual basis. Incorporate proposed responses to FTA comments on the PMP/CMP submittals or related queries.

Deliverables:

1. One updated PMP per year for FTA (three in total)
2. One updated CMP per year for FTA (three in total)

Note:

1. The Consultant shall provide a draft of each Deliverable. The SFMTA will provide comments within two weeks after delivery of the draft report. If the SFMTA has no comments, the Consultant shall submit a final report and the Deliverable will be considered accepted.

Duration: 36 months

**Task 6 Technical Writing Support:**

- A. Provide one full-time technical writer to assist the SFMTA with completion of various tasks including, but not limited to, the following:
  1. Draft letters that involve technical scope
  2. Prepare meeting minutes involving design issues
  3. Prepare contract change documents, especially relating to technical scope, such as proposed change orders, and records of negotiations
  4. Sort, log, and distribute incoming documents from Walsh for in-house review
  5. Collect, consolidate, and edit the technical comments/responses to queries when requested
  6. Coordinate project testing and training classes
  7. Other construction office duties as assigned by the Construction Manager

Duration: 36 months

**Task 7 Office Engineering Support:**

- A. Provide one full-time Office Engineer to perform various duties, including assisting the SFMTA to:
  1. Manage submission of samples, shop drawings, O&M manuals, and other submissions among construction contractors and design stakeholders.
  2. Oversee the responses to requests for information. This includes maintaining a log of requests, preparing non-technical responses, and expediting technical responses from the appropriate parties.
  3. Manage and monitor exception activities from submittals, test reports, inspection reports, non-compliance reports, and meetings.
  4. Provide document control support:
    - i. maintain the Project files, including data, correspondence, reports, contracts, Project drawings, specifications, changes, photographs, and other records pertaining to the Project;
    - ii. compile closeout documents, including contract documents, test reports and testing and commissioning documentation, manuals and warranties.
  5. Other construction office duties assigned by the Engineer.

Duration: 36 months

**Task 8 Construction Inspector Support:**

- A. On an as-needed basis, provide Construction Inspector(s) to ensure compliance with contract plans, specifications, applicable codes, and safety regulations.

Engineering construction inspection includes, but is not limited to, the following activities/duties:

1. Monitor and inspect the work of Walsh and its subcontractors for compliance with plans, specifications and schedules.
2. Prepare and maintain Project documentation, including daily reports, force accounts, materials testing, and other construction records.
3. Participate in and/or conduct planning, preconstruction, coordination, progress, scheduling and field staff meetings.
4. Review plans, specifications, submittals, shop drawings, change orders, constructability reviews and contract closeout records.
5. Assist in detecting and resolving disputes and/or problems
6. Respond to complaints from the public.
7. Ensure that all required tests, operations, measurements, and inspections are scheduled, ordered, satisfactorily completed, and documented for quality assurance/quality control
8. Assist SFMTA staff working on progress payments by verifying and preparing quantity and progress estimates.
9. Review change orders for implementation.
10. Make field measurements and maintain as-built drawing records.
11. Conduct and/or witness testing of contract material, equipment, and installations.
12. Report safety and traffic hazards, defective work and debris to the contractor for correction.

Deliverables:

1. Daily Inspection Reports
2. Daily/monthly quantity sheets

Duration: 36 months

**Task 9 Independent Cost Estimate:**

- A. On an as-needed basis, provide independent cost estimates for contract change orders and claim settlements consistent with FTA guidelines (e.g., using standard cost categories),.

Deliverables:

1. Bottom-up estimate with labor, equipment, material, surcharges, and taxes.
2. Independent cost estimate consistent with FTA guidelines and project SCC codes.

Duration: 36 months

**Task 10 Contract Administration Support/Claims Engineer Services:**

- A. On an as-needed basis, work with the Project team to prepare contract change orders, modifications, and/or claims packages that are consistent with FTA requirements. The Claims Engineer and support staff will perform the following

services:

1. Evaluation of the merit of Walsh-requested change orders
2. Prepare cost analysis (including analysis of proposed profit)
3. Prepare schedule analysis
4. Provide pre-negotiation strategy
5. Negotiations, including preparing records of negotiations
6. Assemble final change order/modification package
7. Prepare position paper for claims
8. Prepare defensive argument against claims and recommendation for settlement

Deliverables:

1. Independent cost estimates
2. Cost analysis (including analysis of proposed profit)
3. Schedule analysis
4. Records of negotiations
5. Evaluations of change order requests
6. Position paper for claims
7. Support documents for defensive argument against claims and recommendation for settlement

Duration: 36 months

**II. 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.

**III. Deliverables**

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

**IV. Department Liaison**

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be Peter Gabancho, P.E.

## APPENDIX B

### CALCULATION OF CHARGES

Task	Sub-Task	Sub-Task Description	Method of Payment	Task Cost
Task 1 – Maintain and Analyze Project Schedule	1A	As-Needed Specialized Schedule Services	Cost + Fixed Fee	\$ 218,488.03
	1B	Monthly Schedule Services (\$4,375.56/month)	Lump Sum	\$ 157,520.16
Task 2 - Risk Management	2A	As-Needed FTA Presentation Services	Cost + Fixed Fee	\$ 58,441.60
	2B	Quarterly Risk Management Services (\$10,866.67/quarter)	Lump Sum	\$ 130,400.04
Task 3 - Quality Assurance/Quality Control (QA/QC) Assistance for Offsite Fabricated Materials	3A	As-Needed Offsite Materials Testing	Cost + Fixed Fee	\$ 355,691.53
Task 4 - Construction Management	4A	Full-Time Construction Manager	Cost + Fixed Fee	\$ 1,246,409.45
	4B	As-Needed Construction Management Support Services	Cost + Fixed Fee	\$ 136,227.95
Task 5 - Project Management Plan (PMP) and Construction Management Plan (CMP) Support	5A	Annual PMP/CMP Update (\$45,533.33/update)	Lump Sum	\$ 136,599.99
Task 6 - Technical Writing Support	6A	Full Time Technical Writer	Cost + Fixed Fee	\$ 840,391.10
Task 7 - Office Engineering Support	7A	Full-Time Office Engineer	Cost + Fixed Fee	\$ 701,919.69
Task 8 - Construction Inspector Support	8A	As-Needed Construction Inspection Support Services	Cost + Fixed Fee	\$ 447,240.95
Task 9 - Independent Cost Estimate	9A	As-Needed Cost Estimating Services	Cost + Fixed Fee	\$ 427,539.91
Task 10 - Contract Administration Support/Claims Engineer Services	10A	As-Needed Claims Engineering Services	Cost + Fixed Fee	\$ 844,603.19
<b>TOTAL COST</b>				<b>\$5,701,473.59</b>
Rounded to				<b>\$5,701,475</b>

**Task 1 - Maintain and Analyze Project Schedule**

<b>DESCRIPTION OF COST ELEMENTS</b>				
<b>1. DIRECT LABOR (SPECIFY)</b>	<b>Hours</b>	<b>Rate/Hr</b>	<b>Total</b>	
<b>PRIME: HNTB Corporation</b>				
<b>1A. As-Needed Specialized Schedule Services</b>				
Asitha Seneviratne, Scheduler - Year 1	50	\$ 64.00	\$ 3,200.00	
Asitha Seneviratne, Scheduler - Year 2*	50	\$ 65.92	\$ 3,296.00	
Asitha Seneviratne, Scheduler - Year 3*	50	\$ 67.90	\$ 3,394.88	
Alex Hein, Scheduler III - Year 1	50	\$ 54.16	\$ 2,708.00	
Alex Hein, Scheduler III - Year 2*	50	\$ 55.78	\$ 2,789.24	
Alex Hein, Scheduler III - Year 3*	50	\$ 57.46	\$ 2,872.92	
<b>SUBCONSULTANT(S): Acumen Building Enterprise</b>				
<b>1A. As-Needed Specialized Schedule Services</b>				
David Folkman-Moore, Scheduler - Year 1	450	\$ 43.45	\$ 19,552.05	
David Folkman-Moore, Scheduler - Year 2*	450	\$ 44.75	\$ 20,138.61	
David Folkman-Moore, Scheduler - Year 3*	450	\$ 46.10	\$ 20,742.77	
Te-Chuan Chang, Scheduler - Year 1	20	\$ 81.64	\$ 1,632.80	
Te-Chuan Chang, Scheduler - Year 2*	20	\$ 84.09	\$ 1,681.78	
Te-Chuan Chang, Scheduler - Year 3*	20	\$ 86.61	\$ 1,732.24	
<b>TOTAL DIRECT LABOR</b>	<b>1710</b>			<b>\$ 83,741.29</b>
<b>2. LABOR OVERHEAD</b>	<b>O.H. Rate</b>	<b>x Direct Labor</b>	<b>Total</b>	
<b>Overhead (HNTB)</b>	147.34%	\$ 18,261.04	\$ 26,905.81	
<b>Overhead (Acumen)</b>	131.27%	\$ 65,480.25	\$ 85,955.93	
<b>TOTAL LABOR OVERHEAD</b>				<b>\$ 112,861.74</b>
			<b>TOTAL DIRECT LABOR AND OVERHEAD</b>	<b>\$ 196,603.03</b>
<b>3. OTHER DIRECT COSTS (Itemized by Cost Category; add lines as-needed)</b>				
			\$ 8,085.00	

	TOTAL OTHER DIRECT COSTS	\$	8,085.00
4. FIXED FEE/PROFIT			
<i>Fixed Fee/Profit for 1A</i>	\$	13,800.00	
	TOTAL FIXED FEE/PROFIT	\$	13,800.00
<b>TOTAL ESTIMATED COST FOR TASK 1A</b>			<b>\$ 218,488.03</b>
*Pending SFMTA approval of 3% rate escalation			
<b>Task 1 - Maintain and Analyze Project Schedule</b>			
<b>DESCRIPTION OF LUMP SUM COST ELEMENTS</b>			
	No. Of Deliveries	Agreed Payment Per Deliverable	Total
<b>SUBCONSULTANT(S): Acumen Building Enterprise</b>			
<b>1B. Monthly Schedule Services</b>			
Schedule Reviews - 12 ea @ \$4,375.56 - Year 1	12	\$ 4,375.56	\$ 52,506.72
Schedule Reviews - 12 ea @ \$4,375.56 - Year 2	12	\$ 4,375.56	\$ 52,506.72
Schedule Reviews - 12 ea @ \$4,375.56 - Year 3	12	\$ 4,375.56	\$ 52,506.72
<b>TOTAL ESTIMATED COST FOR TASK 1B</b>			<b>\$ 157,520.16</b>
<b>TOTAL ESTIMATED COST FOR TASK 1</b>			<b>\$ 376,008.19</b>

**Task 2 - Risk Management**  
**DESCRIPTION OF COST ELEMENTS**

1. DIRECT LABOR (SPECIFY)	Hours	Rate/Hr	Total	
<b>PRIME: HNTB Corporation</b>				
<b>2A. As-Needed FTA Presentation Services</b>				
Chuck Morganson, Risk Manager - Year 1	30	\$ 115.92	\$ 3,477.60	
Chuck Morganson, Risk Manager - Year 2*	30	\$ 119.40	\$ 3,581.93	
Chuck Morganson, Risk Manager - Year 3*	30	\$ 122.98	\$ 3,689.39	
David Norfleet, Risk Management Support - Year 1	30	\$ 91.76	\$ 2,752.80	
David Norfleet, Risk Management Support - Year 2*	30	\$ 94.51	\$ 2,835.38	
David Norfleet, Risk Management Support - Year 3*	30	\$ 97.35	\$ 2,920.45	
<b>TOTAL DIRECT LABOR</b>	180			<b>\$ 19,257.54</b>
2. LABOR OVERHEAD	O.H. Rate	x Direct Labor	Total	
<i>Overhead (HNTB)</i>	147.34%	\$19,257.54	\$ 28,374.06	
<b>TOTAL LABOR OVERHEAD</b>				<b>\$ 28,374.06</b>
			<b>TOTAL DIRECT LABOR AND OVERHEAD</b>	<b>\$ 47,631.60</b>
3. OTHER DIRECT COSTS (Itemized by Cost Category; add lines as-needed)				
			\$ 7,480.00	
			\$	
			<b>TOTAL OTHER DIRECT COSTS</b>	<b>\$ 7,480.00</b>
4. FIXED FEE/PROFIT				
<i>Fixed Fee/Profit for 2A</i>			\$ 3,330.00	
			<b>TOTAL FIXED FEE/PROFIT</b>	<b>\$ 3,330.00</b>
<b>TOTAL ESTIMATED COST FOR TASK 2A</b>				<b>\$ 58,441.60</b>
*Pending SFMTA approval of 3% rate escalation				

**Task 2 - Risk Management**  
**DESCRIPTION OF LUMP SUM COST ELEMENTS**

	No. Of Deliveries	Agreed Payment Per Deliverable	Total	Total
<b>PRIME: HNTB Corporation</b>				
<b>2B. Quarterly Risk Management Services</b>				
Risk Management report - 4 ea @ \$10,866.67 - Year 1	4	\$10,866.67	\$ 43,466.68	
Risk Management report - 4 ea @ \$10,866.67 - Year 2	4	\$10,866.67	\$ 43,466.68	
Risk Management report - 4 ea @ \$10,866.67 - Year 3	4	\$10,866.67	\$ 43,466.68	
<b>TOTAL ESTIMATED COST FOR TASK 2B</b>				
<b>TOTAL ESTIMATED COST FOR TASK 2</b>				<b>\$ 188,841.64</b>

**Task 3 - Quality Assurance/Quality Control (QA/QC) Assistance for Offsite Fabricated Materials**

DESCRIPTION OF COST ELEMENTS				
1. DIRECT LABOR (SPECIFY)	Hours	Rate/Hr	Total	
<b>PRIME: HNTB Corporation</b>				
<b>3A. As-Needed Offsite Materials Testing</b>				
Todd Hoekstra, Offsite QA Manager - Year 1	100	\$ 98.00	\$ 9,800.00	
Todd Hoekstra, Offsite QA Manager - Year 2*	200	\$ 100.94	\$ 20,188.00	
Todd Hoekstra, Offsite QA Manager - Year 3*	200	\$ 103.97	\$ 20,793.64	
Cliff Owyong, Quality Manager - Year 1	20	\$ 107.20	\$ 2,144.00	
Cliff Owyong, Quality Manager - Year 2*	20	\$ 110.42	\$ 2,208.32	
Cliff Owyong, Quality Manager - Year 3*	20	\$ 113.73	\$ 2,274.57	
Chuck Morganson, QA Support - Year 1	72	\$ 115.92	\$ 8,346.24	
Chuck Morganson, QA Support - Year 2*	72	\$ 119.40	\$ 8,596.63	
Chuck Morganson, QA Support - Year 3*	72	\$ 122.98	\$ 8,854.53	
<b>TOTAL DIRECT LABOR</b>	<b>776</b>			<b>\$ 83,205.92</b>
2. LABOR OVERHEAD	O.H. Rate	x Direct Labor	Total	
<b>Overhead (HNTB)</b>	147.34%	\$83,205.92	\$ 122,595.61	
<b>TOTAL LABOR OVERHEAD</b>				<b>\$ 122,595.61</b>
			<b>TOTAL DIRECT LABOR AND OVERHEAD</b>	<b>\$ 205,801.53</b>
3. OTHER DIRECT COSTS (Itemized by Cost Category; add lines as-needed)				
			\$ 135,490.00	
			<b>TOTAL OTHER DIRECT COSTS</b>	<b>\$ 135,490.00</b>
4. FIXED FEE/PROFIT				
<b>Fixed Fee/Profit for 3A</b>			\$ 14,400.00	
			<b>TOTAL FIXED FEE/PROFIT</b>	<b>\$ 14,400.00</b>

<b>TOTAL ESTIMATED COST FOR TASK 3</b>	<b>\$ 355,691.53</b>
*Pending SFMTA approval of 3% rate escalation	

**Task 4 - Construction Management**  
**DESCRIPTION OF COST ELEMENTS**

1. DIRECT LABOR (SPECIFY)	Hours	Rate/Hr	Total
<b>PRIME: HNTB Corporation</b>			
<b>4A. Full-Time Construction Manager</b>			
Devang Desai, Construction Manager - Year 1	1960	\$ 98.88	\$ 193,804.80
Devang Desai, Construction Manager - Year 2*	1960	\$ 101.85	\$ 199,618.94
Devang Desai, Construction Manager - Year 3*	1960	\$ 104.90	\$ 205,607.51
<b>4B. As-Needed Construction Management Support Services</b>			
Grant Martinez, Contract Administrator - Year 1	120	\$ 40.00	\$ 4,800.00
Grant Martinez, Contract Administrator - Year 2*	120	\$ 41.20	\$ 4,944.00
Grant Martinez, Contract Administrator - Year 3*	120	\$ 42.44	\$ 5,092.32
Ria Doshi, Sharepoint technical Support - Year 1	190	\$ 44.80	\$ 8,512.00
Linda Rofles, Sharepoint technical Support - Year 1	32	\$ 86.88	\$ 2,780.16
Aaron Ford, Sharepoint technical Support - Year 1	32	\$ 72.72	\$ 2,327.04
Systems Safety/Operations - Year 1	40	\$ 100.00	\$ 4,000.00
Systems Safety/Operations - Year 2*	40	\$ 103.00	\$ 4,120.00
Systems Safety/Operations - Year 3*	40	\$ 106.09	\$ 4,243.60
Kim Franchi, PMP/CMP - Safety Manual Support - Year 1	30	\$ 109.28	\$ 3,278.40
Kim Franchi, PMP/CMP - Safety Manual Support - Year 2*	30	\$ 112.56	\$ 3,376.75
Kim Franchi, PMP/CMP - Safety Manual Support - Year 3*	20	\$ 115.94	\$ 2,318.70

<b>TOTAL DIRECT LABOR</b>	6694			<b>\$ 648,824.24</b>
2. LABOR OVERHEAD	O.H. Rate	x Direct Labor	Total	
<i>Overhead for 4A [HNTB - Field]</i>	97.22%	\$ 599,031.26	\$ 582,378.19	
<i>Overhead for 4B (HNTB - Home)</i>	147.34%	\$ 49,792.98	\$ 73,364.97	
<b>TOTAL LABOR OVERHEAD</b>				<b>\$ 655,743.16</b>
			<b>TOTAL DIRECT LABOR AND OVERHEAD</b>	<b>\$ 1,304,567.40</b>
3. OTHER DIRECT COSTS (Itemized by Cost Category; add lines as-needed)				
			\$ 4,450	
			\$	
			<b>TOTAL OTHER DIRECT COSTS</b>	<b>\$ 4,450.00</b>
4. FIXED FEE/PROFIT				
<i>Fixed Fee/Profit for 4A</i>			\$ 65,000.00	
<i>Fixed Fee/Profit for 4B</i>			\$ 8,620.00	
			<b>TOTAL FIXED FEE/PROFIT</b>	<b>\$ 73,620.00</b>
<b>TOTAL ESTIMATED COST FOR TASK 4</b>				<b>\$ 1,382,637.40</b>
*Pending SFMTA approval of 3% rate escalation				

**Task 5 - Project Management Plan (PMP) and Construction Management Plan (CMP) Support**

<b>DESCRIPTION OF LUMP SUM COST ELEMENTS</b>				
	No. Of Deliveries	Agreed Payment Per Deliverable	Total	
<b>PRIME: HNTB Corporation</b>				
<b>5A. Annual PMP/CMP Update</b>				
Update PMP/CMP - 2 ea @ \$45,533.33 - Year 1	1	\$ 45,533.33	\$ 45,533.33	
Update PMP/CMP - 2 ea @ \$45,533.33 - Year 2	1	\$ 45,533.33	\$ 45,533.33	
Update PMP/CMP - 2 ea @ \$45,533.33 - Year 3	1	\$ 45,533.33	\$ 45,533.33	
<b>TOTAL ESTIMATED COST FOR TASK 5A</b>				<b>\$ 136,599.99</b>
<b>TOTAL ESTIMATED COST FOR TASK 5</b>				<b>\$ 136,599.99</b>

**Task 6 - Technical Writing Support**  
**DESCRIPTION OF COST ELEMENTS**

1. DIRECT LABOR (SPECIFY)	Hours	Rate/Hr	Total	
<b>SUBCONSULTANT(S): Ghirardelli Associates</b>				
<b>6A. Full-Time Technical Wrtier</b>				
Vanessa Garland, Technical Writing Support - Year 1	1960	\$ 57.00	\$ 111,720.0000	
Vanessa Garland, Technical Writing Support - Year 2*	1960	\$ 58.71	\$ 115,071.6000	
Vanessa Garland, Technical Writing Support - Year 3*	1960	\$ 60.47	\$ 118,523.7480	
<b>TOTAL DIRECT LABOR</b>	<b>5880</b>			<b>\$ 345,315.35</b>
2. LABOR OVERHEAD	O.H. Rate	x Direct Labor	Total	
<i>Overhead (Ghirardelli)</i>	130.41%	\$ 345,315.35	\$ 450,325.75	
<b>TOTAL LABOR OVERHEAD</b>				<b>\$ 450,325.75</b>
			<b>TOTAL DIRECT LABOR AND OVERHEAD</b>	<b>\$ 795,641.10</b>
3. OTHER DIRECT COSTS (Itemized by Cost Category; add lines as-needed)				
			\$ 1,000.00	
			\$	
			<b>TOTAL OTHER DIRECT COSTS</b>	<b>\$ 1,000.00</b>
4. FIXED FEE/PROFIT				
<i>Fixed Fee/Profit for 6A</i>			\$ 43,750.00	
			<b>TOTAL FIXED FEE/PROFIT</b>	<b>\$ 43,750.00</b>
<b>TOTAL ESTIMATED COST FOR TASK 6</b>				<b>\$ 840,391.10</b>
*Pending SFMTA approval of 3% rate escalation				

**Task 7 - Office Engineering Support**  
**DESCRIPTION OF COST ELEMENTS**

1. DIRECT LABOR (SPECIFY)	Hours	Rate/Hr	Total	
<b>SUBCONSULTANT(S): Ghirardelli Associates</b>				
<b>7A. Full-Time Office Engineer</b>				
Sayna Durst, Office Engineer - Year 1	1960	\$ 47.61	\$ 93,315.60	
Sayna Durst, Office Engineer - Year 2*	1960	\$ 49.04	\$ 96,115.07	
Sayna Durst, Office Engineer - Year 3*	1960	\$ 50.51	\$ 98,998.52	
<b>TOTAL DIRECT LABOR</b>	<b>5880</b>			<b>\$ 288,429.19</b>
2. LABOR OVERHEAD	O.H. Rate	x Direct Labor	Total	
<i>Overhead (HNTB)</i>	147.34%	\$	\$	
<i>Overhead (Ghirardelli)</i>	130.41%	\$ 288,429.19	\$ 376,140.50	
<b>TOTAL LABOR OVERHEAD</b>				<b>\$ 376,140.50</b>
			<b>TOTAL DIRECT LABOR AND OVERHEAD</b>	<b>\$ 664,569.69</b>
3. OTHER DIRECT COSTS (Itemized by Cost Category; add lines as-needed)				
			\$ 800.00	
			\$	
			<b>TOTAL OTHER DIRECT COSTS</b>	<b>\$ 800.00</b>
4. FIXED FEE/PROFIT				
<i>Fixed Fee/Profit for 7A</i>			\$ 36,550.00	
			<b>TOTAL FIXED FEE/PROFIT</b>	<b>\$ 36,550.00</b>
<b>TOTAL ESTIMATED COST FOR TASK 7</b>				<b>\$ 701,919.69</b>
*Pending SFMTA approval of 3% rate escalation				

**Task 8 - Construction Inspector Support**

DESCRIPTION OF COST ELEMENTS				
1. DIRECT LABOR (SPECIFY)	Hours	Rate/Hr	Total	
<b>PRIME: HNTB Corporation</b>				
<b>8A. As-Needed Construction Inspection Support Services</b>				
Tim Bessette, Construction Inspection Support - Year 1	400	\$ 70.64	\$ 28,256.00	
Tim Bessette, Construction Inspection Support - Year 2*	480	\$ 72.76	\$ 34,924.42	
Tim Bessette, Construction Inspection Support - Year 3*	400	\$ 74.94	\$ 29,976.79	
<b>SUBCONSULTANT: Avila and Associates</b>				
<b>8A. As-Needed Construction Inspection Support Services</b>				
David Bogdanoff, Inspector - Year 1	250	\$ 73.54	\$ 18,385.00	
David Bogdanoff, Inspector - Year 2*	300	\$ 75.75	\$ 22,723.86	
David Bogdanoff, Inspector - Year 3*	250	\$ 78.02	\$ 19,504.65	
<b>SUBCONSULTANT: Ghirardelli Associates</b>				
<b>8A. As-Needed Construction Inspection Support Services</b>				
Teck Low, Inspector - Year 1	80	\$ 62.10	\$ 4,968.00	
Teck Low, Inspector - Year 2*	160	\$ 63.96	\$ 10,234.08	
Teck Low, Inspector - Year 3*	80	\$ 65.88	\$ 5,270.55	
<b>TOTAL DIRECT LABOR</b>	2400			<b>\$ 174,243.34</b>
2. LABOR OVERHEAD	O.H. Rate	x Direct Labor	Total	

<b>Overhead (HNTB)</b>	147.34%	\$ 93,157.21	\$ 137,257.83	
<b>Overhead (Avila)</b>	129.00%	\$ 60,613.51	\$ 78,191.42	
<b>Overhead (Ghirardelli)</b>	130.41%	\$ 20,472.63	\$ 26,698.36	
<b>TOTAL LABOR OVERHEAD</b>				<b>\$ 242,147.61</b>
			<b>TOTAL DIRECT LABOR AND OVERHEAD</b>	<b>\$ 416,390.95</b>
<b>3. OTHER DIRECT COSTS (Itemized by Cost Category; add lines as-needed)</b>				
			\$ 1,700.00	
			\$	
			<b>TOTAL OTHER DIRECT COSTS</b>	<b>\$ 1,700.00</b>
<b>4. FIXED FEE/PROFIT</b>				
<b>Fixed Fee/Profit for 8A</b>			\$ 29,150.00	
			<b>TOTAL FIXED FEE/PROFIT</b>	<b>\$ 29,150.00</b>
<b>TOTAL ESTIMATED COST FOR TASK 8</b>				<b>\$ 447,240.95</b>
*Pending SFMTA approval of 3% rate escalation				

**Task 9 - Independent Cost Estimate**  
**DESCRIPTION OF COST ELEMENTS**

1. DIRECT LABOR (SPECIFY)	Hours	Rate/Hr	Total	
<b>PRIME: HNTB</b>				
<b>9A. As-Needed Cost Estimating Services</b>				
Cost Estimator - Year 1	150	\$ 65.00	\$ 9,750.00	
Cost Estimator - Year 2*	250	\$ 66.95	\$ 16,737.50	
Cost Estimator - Year 3*	100	\$ 68.96	\$ 6,896.00	
<b>SUBCONSULTANT(S): TBD Consultants</b>				
<b>9A. As-Needed Cost Estimating Services</b>				
Sam Evison, Independent Cost Estimate - Year 1	250	\$ 77.08	\$ 19,270.00	
Sam Evison, Independent Cost Estimate - Year 2*	400	\$ 79.39	\$ 31,756.96	
Sam Evison, Independent Cost Estimate - Year 3*	350	\$ 81.77	\$ 28,620.96	
<b>SUBCONSULTANT(S): Cooper Pugeda Management</b>				
<b>9A. As-Needed Cost Estimating Services</b>				
Bernard Layco, Independent Cost Estimate - Year 1	250	\$ 63.41	\$ 15,852.50	
Bernard Layco, Independent Cost Estimate - Year 2*	400	\$ 65.31	\$ 26,124.92	
Bernard Layco, Independent Cost Estimate - Year 3*	350	\$ 67.27	\$ 23,545.08	
			\$ -	
<b>TOTAL DIRECT LABOR</b>	2500			<b>\$ 178,553.92</b>
2. LABOR OVERHEAD	O.H. Rate	x Direct Labor	Total	

<b>Overhead (HNTB)</b>	147.34%	\$ 33,383.50	\$ 49,187.25	
<b>Overhead (TBD)</b>	122.62%	\$ 79,647.92	\$ 97,664.28	
<b>Overhead (CPM)</b>	110.90%	\$ 65,522.50	\$ 72,664.46	
<b>TOTAL LABOR OVERHEAD</b>				<b>\$ 219,515.99</b>
			TOTAL DIRECT LABOR AND OVERHEAD	<b>\$ 398,069.91</b>
3. OTHER DIRECT COSTS (Itemized by Cost Category; add lines as-needed)				
			\$ 1,600	
			TOTAL OTHER DIRECT COSTS	<b>\$ 1,600.00</b>
4. FIXED FEE/PROFIT				
<b>Fixed Fee/Profit for 9A</b>			\$ 27,870.00	
			TOTAL FIXED FEE/PROFIT	<b>\$ 27,870.00</b>
<b>TOTAL ESTIMATED COST FOR TASK 9</b>				<b>\$ 427,539.91</b>
*Pending SFMTA approval of 3% rate escalation				

**Task 10 - Contract Administration Support/Claims Engineer Services**

DESCRIPTION OF COST ELEMENTS				
1. DIRECT LABOR (SPECIFY)	Hours	Rate/Hr	Total	
<b>PRIME: HNTB Corporation</b>				
<b>10A. As-Needed Claims Engineering Services</b>				
Cynthia Rood, Claims Analyst - Year 1	528	\$ 56.64	\$ 29,905.92	
Cynthia Rood, Claims Analyst - Year 2*	1264	\$ 58.34	\$ 73,740.75	
Cynthia Rood, Claims Analyst - Year 3*	792	\$ 60.09	\$ 47,590.79	
<b>SUBCONSULTANT(S): Cooper Pugeda Management</b>				
<b>10A. As-Needed Claims Engineering Services</b>				
Stephen O' Neill, Claims Analyst, CPM - Year 1	280	\$ 90.00	\$ 25,200.00	
Stephen O' Neill, Claims Analyst, CPM - Year 2*	632	\$ 92.70	\$ 58,586.40	
Stephen O' Neill, Claims Analyst, CPM - Year 3*	512	\$ 95.48	\$ 48,886.27	
<b>SUBCONSULTANT(S): Chaves &amp; Associates</b>				
<b>10A. As-Needed Claims Engineering Services</b>				
Linda Royce, Claim Support - Year 1	160	\$ 46.80	\$ 7,488.00	
Linda Royce, Claim Support - Year 2*	472	\$ 48.20	\$ 22,752.29	
Linda Royce, Claim Support - Year 3*	360	\$ 49.65	\$ 17,874.04	
<b>TOTAL DIRECT LABOR</b>	<b>5000</b>			<b>\$ 332,024.46</b>
2. LABOR OVERHEAD	O.H. Rate	x Direct Labor	Total	

<b>Overhead (HNTB)</b>	147.34%	\$ 151,237	\$ 222,833.27	
<b>Overhead (CPM)</b>	110.90%	\$ 132,673	\$ 147,133.99	
<b>Overhead (Chaves)</b>	139.13%	\$ 48,114	\$ 66,941.47	
<b>TOTAL LABOR OVERHEAD</b>				<b>\$ 436,908.73</b>
			TOTAL DIRECT LABOR AND OVERHEAD	<b>\$ 768,933.19</b>
3. OTHER DIRECT COSTS (Itemized by Cost Category; add lines as-needed)				
			\$ 21,840.00	
			TOTAL OTHER DIRECT COSTS	<b>\$ 21,840.00</b>
4. FIXED FEE/PROFIT				
<b>Fixed Fee/Profit for 10A</b>			\$ 53,830.00	
			TOTAL FIXED FEE/PROFIT	<b>\$ 53,830.00</b>
<b>TOTAL ESTIMATED COST FOR TASK 10</b>				<b>\$ 844,603.19</b>
*Pending SFMTA approval of 3% rate escalation				

## Appendix C

### Direct Salary Rates by Position or Class for Consultant and all Subconsultants

Direct Hourly Rates					
Company	Employee Name	Position Title/Class Description	2017 Rate	2018 Rate	2019 Rate
HNTB Corporation	Asitha Seneviratne	Scheduler	\$ 64.00	\$ 65.92	\$ 67.90
HNTB Corporation	Alex Hein	Scheduler III	\$ 54.16	\$ 55.78	\$ 57.46
HNTB Corporation	Chuck Morganson	Risk Manager	\$ 115.92	\$ 119.40	\$ 122.98
HNTB Corporation	Cliff Owyong	Quality Manager	\$ 107.20	\$ 110.42	\$ 113.73
HNTB Corporation	Cynthia Rood	Claims Analyst	\$ 56.64	\$ 58.34	\$ 60.09
HNTB Corporation	David Norfleet	Risk Management Support	\$ 91.76	\$ 94.51	\$ 97.35
HNTB Corporation	Devang Desai	Construction Manager	\$ 98.88	\$ 101.85	\$ 104.90
HNTB Corporation	Kim Franchi	PMP/CMP	\$ 109.28	\$ 112.56	\$ 115.94
HNTB Corporation	Grant Martinez	Contract Administrator	\$ 40.00	\$ 41.20	\$ 42.44
HNTB Corporation	Tim Bessette	Construction Inspection Support	\$ 70.64	\$ 72.76	\$ 74.94
HNTB Corporation	Todd Hoekstra	Offsite QA Materials	\$ 98.00	\$ 100.94	\$ 103.97
HNTB Corporation	TBD	Cost Estimator	\$ 65.00	\$ 66.95	\$ 68.96
HNTB Corporation	TBD	Systems Safety/Operations	\$ 100.00	\$ 103.00	\$ 106.09
HNTB Corporation	Ria Doshi	Sharepoint Technical Support	\$ 44.80	\$ 46.14	\$ 47.53
HNTB Corporation	Linda Rolfes	Sharepoint Technical Support	\$ 86.88	\$ 89.49	\$ 92.17
HNTB Corporation	Aaron Ford	Sharepoint Technical Support	\$ 72.72	\$ 74.90	\$ 77.15
Acumen Building Enterprise	David Folkman-Moore	Scheduler	\$ 43.45	\$ 44.75	\$ 46.10
Acumen Building Enterprise	Te-Chuan Chang	Scheduler	\$ 81.64	\$ 84.09	\$ 86.61
Avila and Associates	David Bodganoff	Inspector	\$ 73.54	\$ 75.75	\$ 78.02
Chaves & Associates	Linda Royce	Claims Support	\$ 46.80	\$ 48.20	\$ 49.65
Cooper Pugada Management, Inc.	Bernard Layco	Independent Cost Estimate	\$ 63.41	\$ 65.31	\$ 67.27
Cooper Pugada Management, Inc.	Stephen O' Neill	Claims Analyst	\$ 90.00	\$ 92.70	\$ 95.48
Ghirardelli Associates, Inc.	Vanessa Garland	Technical Writing Support	\$ 57.00	\$ 58.71	\$ 60.47
Ghirardelli Associates, Inc.	Sayna Durst	Office Engineer	\$ 47.61	\$ 49.04	\$ 50.51
Ghirardelli Associates, Inc.	Teck Low	Inspector	\$ 62.10	\$ 63.96	\$ 65.88
TBD Consultants	Sam Evison	Independent Cost Estimate	\$ 77.08	\$ 79.39	\$ 81.77

## APPENDIX D

### Schedule of Overhead Rates for Consultant and all Subconsultants

Overhead Rates by Firm	
Firm	Overhead Rate
HNTB - Home	147.34%
HNTB - Field	97.22%
Acumen	131.27%
Avila	129.00%
Chaves	139.13%
CPM	110.90%
Ghirardelli	130.41%
TBD	122.62%

## APPENDIX E

### FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

#### I. DEFINITIONS

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

## **II. FEDERAL CHANGES**

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

## **III. ACCESS TO RECORDS**

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

## **IV. DEBARMENT AND SUSPENSION**

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

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

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

## **VI. CIVIL RIGHTS**

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

## **VII. DBE/SBE ASSURANCES**

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

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

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

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

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

- A. **Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
  - 1. **Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
  - 2. **Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:
    - a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

- b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.
  3. **FTA Intention.** When FTA awards Federal assistance for a experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.
  4. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
  5. **Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
  6. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
  7. **Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- C. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- D. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of

Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

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

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

**XI. ENERGY CONSERVATION REQUIREMENTS**

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

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

- A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the

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

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

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

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

**XIV. PRIVACY**

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

**XV. DRUG AND ALCOHOL TESTING**

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

**XVIII. 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.

#### **XIX. 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.

#### **XX. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

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

#### **XXI. 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.

**XXII. 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.

**XXIII. 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.

**XXIV. 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.

**XXV.**

## APPENDIX F

### SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

#### SBE/DBE REQUIREMENTS

##### **Architects, Engineers, Planners, and Environmental Scientists and Other Professional Services**

### **I. POLICY**

The San Francisco Municipal Transportation Agency (SFMTA), recipient of federal financial assistance from the Federal Transit Administration (FTA), is committed to and has adopted a Small Business Enterprise/Disadvantaged Business Enterprise Program to implement the Disadvantaged Business Enterprise regulations in 49 C.F.R. Part 26 (the Regulations), issued by the U.S. Department of Transportation (DOT).

It is the policy of the SFMTA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which Small Business Enterprises (SBEs) and Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to the SFMTA's construction, procurement and professional services activities. To this end, the SFMTA has developed procedures to remove barriers to SBE/DBE participation in the bidding and award process and to assist SBEs/DBEs to develop and compete successfully outside of the SBE/DBE program. In connection with the performance of this contract, the Contractor shall cooperate with the SFMTA in meeting these commitments and objectives.

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

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

#### **A. Applicability**

Under 49 C.F.R. Sections 26.3 and 26.21, the SFMTA must implement an SBE/DBE Program in accordance with the Regulations. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by DOT federal financial assistance.

## **B. Objectives**

The objectives of this program are to:

1. Remove barriers to SBE/DBE participation in the bidding, award and administration of SFMTA contracts;
2. Assist SBEs/DBEs to develop and compete successfully outside of the Program;
3. Ensure that the Program is narrowly tailored in accordance with 49 C.F.R. Part 26;
4. Ensure that only SBEs/DBEs meeting the eligibility requirements are allowed to participate as SBEs/DBEs;
5. Identify business enterprises that are qualified as SBEs/DBEs and are qualified to provide SFMTA with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. Develop communications programs and procedures that will acquaint prospective SBEs/DBEs with the SFMTA's contract procedures, activities and requirements and allow SBEs/DBEs to provide the SFMTA with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
7. Administer the Program in close coordination with the various divisions within the SFMTA so as to facilitate the successful implementation of this Program.

## **C. Administration of Program**

The Director of Transportation is responsible for adherence to this Program. The DBE Liaison Officer (DBELO) shall be responsible for the development, implementation and monitoring of this Program. The Municipal Transportation Board of Directors and the Director of Transportation expect that all SFMTA personnel shall adhere to the provisions and the spirit of this Program.

## **D. Prohibited Discrimination**

SFMTA will not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the basis of (the fact or perception of a person's) race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation,

gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

**E.** The SFMTA shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals in the groups or categories or having the characteristics listed above.

**F.** The SFMTA has signed the federal assurances regarding non-discrimination required under 49 C.F.R. Section 26.13. See III.D (Contract Assurances) for requirements of the Contractor and Subconsultants.

## **II. DEFINITIONS**

Any terms used in the SFMTA's SBE/DBE Program that are defined in 49 C.F.R. Section 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. An SBE is defined as follows:

**Small Business Enterprise (SBE):** An SBE is a for-profit, small business concern with a three-year average gross revenue not exceeding current SBA size standards appropriate for its type of work and is either verified eligible by the SFMTA or certified under the State of California's Small Business Program with the Department of General Services, the California Unified Certification Program with a U.S. Department of Transportation recipient, or the City and County of San Francisco's LBE program with the Contract Monitoring Division.

A DBE is defined as follows:

**Disadvantaged Business Enterprise (DBE):** A DBE is a for-profit, small business concern (1) that is at least 51 % owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which 51% of the stock is owned by one or more socially and economically disadvantaged individuals; (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (3) that is certified under the California Unified Certification Program (Federal DBE Program).

The terms "Contractor" and "Consultant" are used synonymously throughout this document, as are the terms "Subcontractor" and "Subconsultant."

## **III. SBE/DBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS**

### **A. SBE Participation Goal**

A goal of 20 percent SBE participation has been established for this Contract. This SBE goal will apply to the following types of Contracts or scope of work in the contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs;

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

### **B. DBE Participation Goal**

A goal of eight percent DBE participation for woman-owned businesses has been established for this Contract. This DBE goal will apply to the following types of contracts or scope of work in the contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

### **C. Contract Assurances**

The Contractor and its Subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The Contractor and its Subcontractors shall carry out the 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 remedies as the SFMTA deems appropriate. Such remedies may include, but are 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.

### **D. Use of SBE/DBE Firms**

The Consultant shall use the specific SBEs/DBEs listed to perform the work, if any, and supply the materials for which each is listed unless the Consultant obtains CCO's prior written consent. Unless prior written consent by CCO is provided, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE/DBE.

### **E. Substitution of Subconsultants and Suppliers**

The Consultant shall not terminate an SBE/DBE Subconsultant or Supplier for convenience and then perform the work with its own forces. Before requesting the termination and/or substitution of an SBE/DBE Subconsultant, the Consultant must give notice in writing to the SBE/DBE Subconsultant, with a copy to CCO, of its intent to request to terminate and/or substitute, and the reason for the request. The Consultant must give the SBE/DBE five days to respond to the notice and advise CCO and the Consultant of the reasons, if any, why the SBE/DBE objects to the proposed termination of its subcontract and why the Consultant's request should not be approved. CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the SFMTA Board of

Directors.

When an SBE/DBE subconsultant is terminated as provided in this section, or fails to complete its work on the contract for any reason, the Consultant shall make good faith efforts to find another SBE/DBE subconsultant to substitute for the original SBE/DBE. These good faith efforts shall be directed at finding another SBE/DBE to perform at least the same amount of work under the Contract as the SBE/DBE that was terminated, to the extent needed to meet the established SBE and DBE contract goals.

#### **F. Addition of Subconsultants and Suppliers**

The Consultant shall notify CCO prior to any addition of an SBE/DBE or non-SBE/non-DBE subconsultant or supplier to the Contract.

#### **G. Prompt Payment to Subcontractors**

In accordance with the SFMTA's SBE/DBE Program, no later than three days from the date of Contractor's receipt of progress payments by the SFMTA, the Consultant shall pay any Subconsultants for Work that has been satisfactorily performed by said Subconsultants. Unless the Consultant notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the Consultant and the Subconsultant. Within five working days of such payment, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such Subconsultants for the Work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

Consultant may withhold retention from subconsultants if City withholds retention from Consultant. Should retention be withheld from Consultant, within 30 days of City's payment of retention to Consultant for satisfactory completion of all work required of a subconsultant, Contractor shall release any retention withheld to the subconsultant. Satisfactory completion shall mean when all the tasks called for in the subcontract with subconsultant have been accomplished and documented as required by City.

If the Consultant does not pay its subconsultant as required under the above paragraph, it shall pay interest to the subconsultant at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

### **IV. MONITORING AND COMPLIANCE**

#### **A. SBE/DBE Records; Reporting Requirements**

The Contractor shall maintain records of all SBE/DBE participation in the performance of the contract including Subcontracts entered into with certified SBES/DBES and all materials purchased from certified SBES/DBES.

The Contractor shall submit SBE/DBE participation reports to the SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of

each SBE/DBE performing work on the Contract, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE/DBE. Within 30 days of completion of the Contract, or as otherwise directed by the CCO, the Contractor shall submit a final summary SBE/DBE report to the CCO.

**B. Noncompliance; Administrative Remedies**

The SFMTA implements appropriate mechanisms to ensure that its prime contractors and subcontractors comply with the SBE/DBE Program's regulatory requirements. The SFMTA will apply legal and contractual remedies available under federal, state and local law. See Section III.A. for remedies available to the SFMTA for a contractor's failure to comply with requirements of the SBE/DBE Program.

The SFMTA also maintains a monitoring and enforcement mechanism to verify that the work committed to SBEs/DBEs at contract award is actually performed by the SBEs/DBEs. This mechanism provides for a running tally of actual SBE/DBE attainments and includes a provision ensuring that SBE/DBE participation is credited toward overall or contract goals only when payments are actually made to SBE/DBE firms.

## APPENDIX G

### Directory of Subconsultants

<b>Firm</b>	<b>Contact</b>	<b>Address</b>	<b>Phone/Email</b>	<b>SBE</b>
Acumen Building Enterprise	Walter Allen	7770 Pardee Lane, Suite 200 Oakland, CA 94621	510-530-3029	<b>X</b>
Avila and Associates Consulting Engineers	Ernesto A. Avila	490 Post Street, Suite 1415 San Francisco, CA 94102	415-576-1230	<b>X</b>
Chaves & Associates	Arlene Chaves	5 Third Street, Suite 505 San Francisco, CA 94103	415-693-9080	<b>X</b>
Cooper Pugeda Management, Inc.	Ismael Pugeda	65 McCoppin Street San Francisco, CA 94103	415-543-6515	<b>X</b>
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