

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance & Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Contract No. 2024-07-FTA, Task Order Agreement between City and County of San Francisco and Trapeze Software Group, Inc. for Scheduling Software and Related Professional Services, to procure as-needed proprietary Scheduling System software and related services, for a total contract amount not to exceed \$9 million for a term of nine years; and authorizing the Director of Transportation approve task orders under that agreement for an amount not to exceed \$1 million per task order.

- In 2002, the SFMTA entered into Contract No. MR-1185 with Trapeze Software Group, Inc. (Trapeze) to procure proprietary software and related professional services for a Scheduling System, which performs critical operator and vehicle scheduling, run cutting, rostering, and reporting system with data collection/route analysis and transit operator dispatch and timekeeping/payroll functions for 2,500 SFMTA employees, all of which are functions critical to the efficient operation of transit services. Contract MR-1185 expired in 2012.
- Under a task order contract, the parties negotiate general terms and conditions, including liability, indemnity, and insurance, which then streamlines contracting to procure software and related services, as task orders need only address a description of the services and deliverables to be procured, price, and delivery milestones and completion dates.
- On September 25, 2014, the SFMTA executed SFMTA Contract No. 2015-16, a task order agreement, with Trapeze, for a term of eight years and a contract amount of \$8 million for as-needed software and professional services to maintain and improve the Scheduling System and integrate it to the radio system and other SFMTA systems, procure maintenance, license web enabled modules, and train SFMTA staff. That contract expired in October 2022.
- The proposed Contract No. 2024-07-FTA is also an as-needed services agreement, under which the SFMTA will issue task orders to procure proprietary Scheduling System software upgrades and maintenance, training, systems integration, and related professional services to maintain and improve the operations of the Scheduling System.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract No. 2024-07-FTA

APPROVALS:

	DATE
DIRECTOR 	<u>March 27, 2024</u>
SECRETARY 	<u>March 27, 2024</u>

ASSIGNED SFMTAB CALENDAR DATE: April 2, 2024

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PURPOSE

Authorizing the Director of Transportation to execute Contract No. 2024-07-FTA, Task Order Agreement between City and County of San Francisco and Trapeze Software Group, Inc. for Scheduling Software and Related Professional Services, to procure as-needed proprietary Scheduling System software and related services, for a total contract amount not to exceed \$9 million for a term of nine years; and authorizing the Director of Transportation approve task orders under that agreement for an amount not to exceed \$1 million per task order.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This contract will support the following Strategic Plan Goals:

Goal 5: Deliver reliable and equitable transportation services.

Goal 10: Position the agency for financial success. Trapeze software is used to ensure that near-term resource allocation is efficient and reliable to meet the city's long-term transportation vision.

This contract will support SFMTA's Transit First Policy Principles as follows:

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.
9. 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.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

The SFMTA uses a proprietary Scheduling System from Trapeze Software Group to create schedules for Muni transit operations, including operator shift and run scheduling and payroll calculation, dispatch for bus and rail trips and runs, and vehicle assignment.

On January 11, 2002, the City entered Contract No. MR-1185 with Trapeze Software Group in the amount of \$2.9 million to license the Scheduling System and for related professional services to configure and implement the Scheduling System. In September 2014, the SFMTA needed additional software and related services to integrate data from the Scheduling System with the (then) new radio system procured from Harris Corporation. To streamline the contract

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negotiation and approval process, ensure consistent contract terms and conditions for multiple procurements, avoid project delays, and ensure more consistent contract terms than might be achieved in negotiating multiple contracts with Trapeze, staff negotiated Contract 2015-16 with Trapeze as a task order agreement, which addressed all contract terms except scope of work, price, and delivery and completion schedules. Task orders issued under that agreement described the work to be performed, price and completion schedule. That contract expired in October 2022. The proposed agreement would replicate the expired task order contract; the SFMTA would issue negotiated task orders to procure additional software upgrades and related professional services to improve the Scheduling System's data security, provide remote system support, staff training, and assistance integrating Scheduling System data to other SFMTA data systems.

The contract amount of this agreement is not-to-exceed \$9 million, which is the estimated value of the foreseeable services and software upgrades that the Scheduling System will require over the nine-year term of the agreement. Funds will be certified for each task order issued; Trapeze is not guaranteed the entire value of the contract. Staff anticipates that most task orders issued under this agreement will be negotiated as "lump sum," in which the Trapeze will procure software and perform all work in a task order for a negotiated price. That structure shifts much of the risk of cost overruns and delay to Trapeze as payment is based on successful completion of deliverables. Where it not possible to estimate costs of particular work accurately (for example, integrating Scheduling System data to another City data system), the SFMTA and Trapeze may proceed under task order using negotiated daily rates with a total amount not-to-exceed. The daily rates are within five percent of the negotiated daily rates provided in the agreement, by type of personnel.

All services will be provided by Trapeze Software Group, Inc. There are no DBE or SBE subcontracting goals for this agreement because the work consists entirely of providing proprietary software and related professional services that can only be provided by Trapeze.

As is common for many of the SFMTA's software and system contracts and common in the industry, the proposed Contract contains modified indemnity and liability provisions. The City's standard contract terms shift the majority of risk to the contractor. Here, the proposed contract limits Trapeze's liability to the City to Trapeze's own negligence and limits its liability to the City to the value of disputed work. The City and Trapeze both waive consequential and incidental damages, so contract damages are limited to direct damages (out-of-pocket costs). As authorized by the Administrative Code, the Director and the City Attorney's Office in consultation with the City's Risk Manager have agreed that these modifications are warranted because in light of the insurance and other requirements of the proposed Contract the SFMTA is not subject to undue risk, such provisions are common in technology procurement contracts, and waiving these requirements is in the best interest of the City.

STAKEHOLDER ENGAGEMENT

The stakeholders for the Scheduling System who will be impacted by the work performed under the proposed agreement consist only of SFMTA staff in the Transit Division, who attend internal

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meetings to address ways in which the Scheduling System is used and may be improved.

ALTERNATIVES CONSIDERED

Staff have considered whether it would be preferable to replace the Scheduling System with other systems. But the Trapeze Scheduling System is central to SFMTA transit operations as it is integrated to multiple other critical SFMTA business systems, including payroll, dispatch, and radio communications, and the SFMTA has structured many core business processes around the Trapeze Scheduling System, including run and shift bidding, time keeping and payroll.

The SFMTA requires maintenance and upgrades to the scheduling system to provide transit services and ensure accurate payroll, timekeeping, data transmission, and run scheduling. These services must be contracted out because the software is proprietary to Trapeze. The City does not have the expertise or ability to produce scheduling and dispatch software itself.

FUNDING IMPACT

When the SFMTA requires Scheduling System software or services are needed, staff will plan for that work as part of normal SFMTA capital procedures to identify the scope of the required work and identify funding. Staff will then negotiate a task order with Trapeze, the costs of which will be included in relevant operating budget for that work.

ENVIRONMENTAL REVIEW

On February 21, 2024, the SFMTA, under authority delegated by the Planning Department, determined that the Contract 2024-07-FTA for a Task Order agreement with Trapeze Software Group, Inc. for scheduling software and related services is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b). A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney’s Office has reviewed this calendar and has approved the Contract as to form.

The Civil Service Commission approved procuring services from Trapeze group under item 43627 – 23/24 (11/06/2023).

The Contract Compliance Office has reviewed this calendar item and has approved the Contract as to form.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Contract No. 2024-07-FTA, Task Order Agreement between City and County of San

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Francisco and Trapeze Software Group, Inc. for Scheduling Software and Related Professional Services, to procure as-needed proprietary Scheduling System software and related services, for a total contract amount not to exceed \$9 million for a term of nine years; and authorize the Director of Transportation approve task orders under that agreement for an amount not to exceed \$1 million per task order.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, In 2002, the SFMTA entered into Contract No. MR-1185 with Trapeze Software Group, Inc. (Trapeze) to procure proprietary software and related professional services for a Scheduling System, which performs critical operator and vehicle scheduling, run cutting, rostering, and reporting system with data collection/route analysis and transit operator dispatch and timekeeping/payroll functions for 2,500 SFMTA employees, all of which are functions critical to the efficient operation of transit services; Contract No. MR-1185 expired in 2012; and,

WHEREAS, Under a task order contract, the parties negotiate general terms and conditions, including liability, indemnity, and insurance, which then streamlines contracting to procure software and related services, as task orders need only address a description of the services and deliverables to be procured, price, and delivery milestones and completion dates; and,

WHEREAS, On September 25, 2014, the SFMTA executed SFMTA Contract No. 2015-16, a task order agreement, with Trapeze, for a term of eight years and a contract amount of \$8 million for as-needed software and professional services to maintain and improve the Scheduling System and integrate it to the radio system and other SFMTA systems, procure maintenance, license web enabled modules, and train SFMTA staff. That contract expired in October 2022; and,

WHEREAS, The proposed Contract 2024-07-FTA is also an as-needed services agreement, under which the SFMTA will issue task orders to procure proprietary Scheduling System software upgrades and maintenance, training, systems integration, and related professional services to maintain and improve the operations of the Scheduling System; and,

WHEREAS, On February 21, 2024, the SFMTA, under authority delegated by the Planning Department, determined that Contract 2024-07-FTA for a Task ask Order agreement with Trapeze Software Group, Inc. for scheduling software and related services is not defined as 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; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract No. 2024-07-FTA, Task Order Agreement between City and County of San Francisco and Trapeze Software Group, Inc. for Scheduling Software and Related Professional Services, for proprietary Scheduling System software and related services, for a total contract amount not to exceed \$9 million for a term of nine years; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to approve task orders issued under Contract No. 2024-07-FTA not exceeding \$1 million per task order, and task orders exceeding that amount will require SFMTA Board of Directors approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of April 2, 2024.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Task Order Agreement
between City and County of San Francisco
and
Trapeze Software Group, Inc.**

for Scheduling Software and Related Professional Services

Contract No. SFMTA-2024-07-FTA

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

**Task Order Agreement between City and County of San Francisco and
Trapeze Software Group, Inc. for Scheduling Software and Related Professional Services
Contract No. SFMTA -2024-07-FTA**

This Task Order Agreement for Scheduling Software and Related Professional Services (“Agreement”) is made as of _____, in San Francisco California by and between Trapeze Software Group, Inc. (“Trapeze” or “Contractor”), whose principal place of business is located at 5265 Rockwell Drive NE, Cedar Rapids, IA, 52402, and the City and County of San Francisco (“City”), a municipal corporation, acting by and through its Municipal Transportation Agency (“SFMTA”).

Recitals

A. The SFMTA purchased from Trapeze certain transit operations scheduling software and related professional services under a Purchase and Services Agreement for Purchase and Implementation of an Integrated Scheduling, Run Cutting, Rostering and Reporting System with Data Collection/Route Analysis and an Operator Dispatch and Time Keeping System, dated April 2002, as amended (“Original Contract”).

B. Subsequent to the Original Contract, the SFMTA has purchased certain upgrades, updates and additional software modules to maintain and improve the functionality to the Software from Trapeze under separate maintenance, service, and license agreements (“Subsequent Contracts”).

C. The SFMTA desires to procure from Trapeze and Trapeze desires to provide to the SFMTA under Task Orders (as defined in Article 1), issued under this Agreement, additional Software that is proprietary to Contractor, and to obtain related professional services, including, but not limited to, Software configuration, customization, implementation, third party system integration, and training services (collectively hereinafter “Services”) necessary to maintain and improve the functionality of the System. This Agreement does not contemplate or include the development of any custom software.

D. This Contract does not concern the planning, research, or development of systems or software. All software that Trapeze has provided to the SFMTA under the contracts referenced above and will provide under this Agreement are commercial, off-the-shelf, non-custom software products that Trapeze developed as part of its general business enterprise separately, apart, or prior to any of those agreements. Said software was not developed specifically for the SFMTA or under any federally funded or other grant program to develop transit scheduling software.

E. Contractor represents and warrants that it is qualified to provide the Software and perform the Services as described in this Agreement.

F. The Software and Services procured under this Agreement are proprietary to Contractor and cannot be obtained from or performed by another vendor. This Agreement was procured through the single source requirements for sole source contracting, in accordance with federal guidelines set out in FTA Circular 4220.1F, Chapter VI, paragraph 3.1. – Other Than Full and Open Competition, and as authorized by San Francisco Administrative Code Section 21.30. Software and Services procured under this Agreement are capital improvements. Due to the proprietary nature of the Work under this Agreement, Contractor and SFMTA agree that Contractor must perform the Work with its own personnel and no portion of the Work can or will be performed by a subcontractor.

G. The City’s Civil Service Commission approved Contract number 43627-23/24 for this Agreement on November 6, 2023.

H. The City’s San Francisco Municipal Transportation Agency Board of Directors approved this Agreement by Resolution No. _____ on _____.

I. Funding for the Software and Services to be provided under this Agreement will be provided by federal grants and local funding.

Now, THEREFORE, the Parties agree as follows:

Article 1 Definitions

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

“**Acceptance**” means the formal written acceptance that a Task Order has been completed in accordance with the Acceptance criteria stated in the applicable Task Order Scope of Work.

“**Agreement**” or “**Contract**” means this contract document, including all included Appendices, any future approved Contract Modifications, Task Orders issued under this Agreement, and all applicable City Ordinances and Mandatory City Requirements and federal contract requirements incorporated into this Agreement by reference.

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

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

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

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

“**Contract Administrator**” means the SFMTA contract administrator assigned to this Agreement.

“**Contract Amount**” means the not-to-exceed value of this Agreement as authorized by the SFMTA Board of Directors (and the San Francisco Board of Supervisors if this Agreement is subject to San Francisco Charter Section 9.118).

“**Contract Modification**” means a written amendment to the Contract, approved by Contractor and the Director of Transportation or their authorized designee.

“**Contractor**” or “**Trapeze**” means Trapeze Software Group, Inc., whose principal place of business is located at 5265 Rockwell Drive NE, Cedar Rapids, IA, 52402.

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

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

“**Days**” (whether or not capitalized) means a number of continuous calendar days, unless otherwise designated.

“**Deliverables**” means Contractor’s work product resulting from the Services provided by Contractor to City, including without limitation, the work product described in this Agreement and any Task Order.

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

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

“**Documentation**” means the user manuals, System design documents, and training materials pertaining to the System and Software supplied by Contractor.

“**Effective Date**” means the date the Director of Transportation executes this Agreement, which is the date stated in the first paragraph of this Agreement.

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

“**Key Personnel**” means Contractor personnel identified in a Task Order whose Services are necessary for the successful completion of the Work for that Task Order.

“**License Date**” means the date City accepts Software provided by Contractor to SFMTA under this Agreement as meeting the specifications and requirements stated in the Task Order for that Software.

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

“**Milestone**” means the completion of an element of Work specified in a Task Order Scope of Work, which may include a date of completion requirement, and which triggers an obligation for the SFMTA to pay Contractor for the Work completed under that Milestone.

“**Notice to Proceed**” (“**NTP**”) means written notice to Contractor of the date on which it shall begin performance of the Work to be done under a Task Order.

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

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

“**Proposal**” (“**Task Order Proposal**”) means Contractor’s written response to a Task Order request issued by the SFMTA that will describe the Scope of Work to be performed, the schedule and Milestones, payment schedule and amounts, and testing procedures.

“**Purchase Order**” means the written order issued by the SFMTA to Contractor confirming that City has authorized funds for a Task Order.

“**San Francisco Municipal Transportation Agency**” or “**SFMTA**” means City department that has jurisdiction over all surface transportation in San Francisco, as provided in Article VIIIA of City’s Charter.

“Scope of Work” means the Services that Contractor shall perform or provide under Task Orders, as generally described in Section 4.1 and more specifically described in approved Task Orders.

“Services” means the professional services Contractor will provide to SFMTA under this Agreement, including, but not limited to Software configuration, customization, implementation, third party system integration, and training services as described in Task Orders, including all incidental services, labor, supervision, materials, Contractor’s tools and equipment, actions and other requirements necessary to perform the Services (See Article 4).

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

“Software” (or **“Scheduling Software”**) means the System electronic code that is proprietary to Contractor, excluding Third Party Software listed at Appendix D which may be updated from time to time as agreed between the Parties, included code, and other software products described in a Task Order that Contractor shall supply to the SFMTA under this Contract or that Contractor has supplied to the SFMTA under prior contracts necessary to operate the System.

“Software Operational Characteristics” means the authorized use of Software, including the functions and tasks the Software is to perform, and the number of allowable seats (users), rides, vehicles, or any other usage parameters and limits stated in the Task Order by which Contractor provided the Software to City.

“Software Module” means a non-customized code that is a subset of the Software, which performs specified System functions.

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

“System” means the Integrated Scheduling, Run Cutting, Rostering and Reporting System with Data Collection/Route Analysis and an Operator Dispatch and Time Keeping System, related Software and Software modules, Equipment, and other deliverables that Contractor has provided to the SFMTA under the Original Agreement and subsequent agreements, and Software that Contractor will provide to the SFMTA under this Agreement.

“**Task Order**” means a negotiated agreement between Contractor and the SFMTA (that is subordinate to and subject to the terms and conditions of this Agreement) that describes the Work to be performed, compensation to be paid Contractor for that Work, schedule and Milestone dates for completion of that Work, testing and Acceptance procedures, and warranty.

“**Term**” means the period that the Agreement is in effect, commencing on the Effective Date.

“**Third Party Software**” means software products provided and licensed by Contractor to the SFMTA that are necessary to operate the System that are not Contractor’s intellectual property.

“**Trade Secrets**” means the Software, Documentation, and other related information (including all modifications of the Software developed for City) disclosed to City or SFMTA under this Agreement, including trade secrets and other confidential and proprietary information of Trapeze. Trade Secrets are Confidential Information.

“**Updates**” means patches and fixes to Software problems that are necessary to repair and maintain the functionality of the Software but do not provide additional or enhanced System functions.

“**Upgrades**” means generic enhancements to the Software that Contractor generally makes available under a maintenance agreement.

“**Work**” means the Services, and Software that Contractor shall provide to the SFMTA, as described in Section 4.1 and more specifically described in Task Orders.

Article 2 Term of the Agreement

2.1 The Term of this Agreement shall commence on the date the Director of Transportation executes this Agreement, which is the date stated in the first paragraph of this Agreement. (which shall be the Effective Date of this Agreement), and shall expire nine (9) years later unless earlier terminated as otherwise provided in this Agreement or extended by approved Contract Modification (as provided in Section 11.3). The Parties may agree to extend the Term of this Agreement as provided in this Agreement or subject to a sole source determination and approval by the SFMTA Board of Directors, and the San Francisco Board of Supervisors as required by Charter Section 9.118.

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 City’s Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance

authorization. Except as separately stated in this Agreement, this Agreement may 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 period 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 provision shall not absolve City from payment obligations for any Work already performed by Contractor pursuant to an existing Task Order(s) prior to termination due to lack of funding.

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 City Charter, applicable laws governing emergency procedures., no City representative, officer or employee is authorized to offer or promise, nor is City required to honor, any offered or promised payments to Contractor in excess of the certified maximum amount for this Agreement without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.3 (Modification of this Agreement). The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation. The SMFTA will confirm that the Controller has certified funds for Work under a Task Order when the SFMTA provides Contractor notice to proceed to commence Work on a Task Order.

3.3 Compensation

3.3.1 SFMTA shall pay Contractor for Work as provided in Task Order(s) issued under this Agreement. In no event shall the amount due under any Task Order exceed the amount of compensation stated in that Task Order, unless the Task Order is modified in accordance with Section 4.2 (Task Order Procedures and Requirements). In no event shall the total amount of Work procured under all Task Orders issued under this Agreement exceed Nine Million US Dollars (\$9,000,000), unless this Agreement's Contract Amount is modified by a Contract Modification properly executed and approved (See Section 11.3 – Modification of Agreement). The Term and total Contract Amount of this Agreement cannot be modified by a Task Order.

3.3.2 The breakdown of costs and compensation to be paid for completion of Milestones and Deliverables to be performed under a Task Order shall be stated in the Task Order. No charges shall be incurred under this Agreement nor shall any payments become due

to Contractor until it has completed the Work specified for a Milestone or Deliverable in the Task Order, SFMTA has received the specified Deliverable(s) from Contractor, and SFMTA has approved the invoiced Work as meeting the requirements of the Task Order and this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided in this Agreement or a Task Order.

3.3.3 In no event shall City be liable for interest or late charges for any late payments. Subject to the above terms and receipt of an accurate invoice, which is properly addressed and delivered, City shall pay invoices for undisputed Work within thirty (30) calendar days of receipt of the invoice for that Work.

3.3.4 The City shall be responsible for payment of all applicable sales taxes including use taxes, and this obligation shall survive termination of this Agreement.

3.4 Methods of Calculating Contractor's Compensation. Contractor's compensation for the Work shall be stated in the Task Order. Compensation for a Task Order may be determined by negotiated lump sum or by a negotiated amount not to exceed using the rates stated in Appendix B. The Parties may agree that Contractor will be compensated upon completion of Milestones or percentage of Work completed, as set in the relevant Task Order.

3.5 Reimbursable Costs. This Agreement is subject to federal regulations concerning the reimbursement and audit of expenses, costs and overhead as set in "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," set out in 2 CFR Part 200 et seq. "Federal Cost Requirements." Contractor acknowledges that it is familiar with these Federal Cost Requirements. Contractor shall not seek reimbursement and City shall not pay reimbursement to Contractor for costs (including but not limited to direct costs, indirect costs, and overhead) that are not compensable under the Federal Cost Requirements. Contractor understands and acknowledges that City shall not reimburse Contractor for Contractor's costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments to Contractor under this Agreement are subject to audit and adjustment in accordance with the requirements and standards set out in the Federal Cost Requirements. Out-of-Pocket Expenses will be included in the project budget of each Task Order and will be included in the negotiated lump sum or amount not to exceed amount stated in the Task Order.

3.5.1 Out-of-Pocket Expenses. The SFMTA will reimburse Contractor for the out-of-pocket expenses in accordance with the applicable Task Order. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All expenses required to perform Work must be described in detail in a Task Order and identified as a line item in the Task Order budget. If unforeseen expenses are required to perform Work after the Task Order has been approved, such costs must be documented in detail and pre-approved in writing by the SFMTA. All travel expenses must be pre-approved by the SFMTA, and Contractor will endeavor

to obtain the best price for air fare available; travel must be planned in advance to obtain the best fare reasonably available. Receipts for all expenses must accompany every Contractor invoice.

3.5.2 Non-Reimbursable Expenses. The SFMTA will not reimburse Contractor for any of the following expenses: (1) Contractor personnel relocation costs; (2) Purchases of office and field supplies/equipment (unless the supplies or equipment are not ordinary/typical supplies and equipment, and are uniquely required of this Project, and are used only for this Project, in which case the costs shall be separately identified in the Task Order Proposal. Contractor shall provide said supplies and equipment to SFMTA at the end of the Contract; and, (3) Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of City are not reimbursable unless otherwise approved by the SFMTA in advance as being necessary (e.g., no viable public transit options available); (4) Any travel expenses, including transportation, meals, lodging costs, which are not approved by the SFMTA; (5) Any overnight courier services or deliveries outside of the Bay Area between Contractor's offices, except as approved by the SFMTA; (6) Any personal or entertainment expenses; (7) Computer usage; and, (8) Facsimile and telecommunications expenses.

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

3.6 Invoice - Calculation of Charges . Contractor shall provide an invoice to the SFMTA on a monthly basis for the price agreed in the Task Order for the Milestone(s) completed in the immediately preceding month, completion of the Task Order, or a percentage or dollar amount per Milestone each month, as stated in the Task Order.

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

- (a) Contract Number
- (b) Task Order Number
- (c) Purchase Order Number for the Task Order

- (d) A copy of the receipts expenses as incurred
- (e) Description of the Work or and/or Milestones invoiced
- (f) Contract payment terms
- (g) Sales/use tax (if applicable)
- (h) Total costs
- (i) Progress Payment Form – SFMTA Form No. 6

3.7 Payment Limited to Satisfactory Work. Contractor is not entitled to any payments from City until the SFMTA has received and approves the Software, Services or Deliverables in accordance with the Acceptance criteria specified in the Task Order for which Contractor seeks payment. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Work during a testing and acceptance period, under Software Warranty or under a separate Maintenance Agreement without additional charge to the SFMTA, in accordance with the Agreement. The City may reject Work that does not conform to the requirements of this Agreement.

3.8 Withhold Payments. If Contractor fails to provide Software, Services or Deliverables in accordance with Contractor’s obligations under this Agreement, City may withhold payment only for such disputed Work until such failure to perform is cured, and Contractor shall not stop performing the Work as a result of City’s withholding of payment as provided herein.

3.9 Payment Process

3.9.1 Payment Due Date: Unless the SFMTA notifies Contractor that a dispute exists, the SFMTA shall issue payment for undisputed Work within thirty (30) Days of the date the SFMTA receives the invoice for that Work. Payment is deemed to be made on the date on which City has posted the electronic payment to Contractor.

3.9.2 Progress Payment Form . The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor’s submission of the SFMTA Progress Payment Form (SFMTA Form No. 6). If the Progress Payment Form is not submitted with Contractor’s invoice, the Controller will notify the SFMTA and Contractor of the omission.

3.9.3 City Payment for Work

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

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

3.9.4 Grant-Funded Contracts

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

(b) **Grant Terms.** The funding for this Agreement is provided to the SFMTA in full or in part by a Federal or State grant. As part of the terms of receiving the funds, the SFMTA must incorporate some of the terms into this Agreement (Grant Terms). The incorporated Grant Terms are set out in Appendix C to this Agreement (Federal Contract Requirements). To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Terms and the other provision(s), the Grant Terms shall apply.

3.10 Audit and Inspection of Records. Contractor agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its Services under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than four (4) years after final payment for the specific Software or Services provided 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.

3.11 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, 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 City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to City if Contractor or subcontractor:

(a) knowingly presents or causes to be presented to an officer or employee of 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 City; (c) conspires to defraud City by getting a false claim allowed or paid by 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 City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

3.12 Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way reduce, compromise or waive the liability of Contractor to replace unsatisfactory Work, including but not limited to materials, Software and/or Services, although the unsatisfactory character of Work same may not have been apparent or detected at the time such payment was made. Work that does not conform to the requirements of this Agreement or the Task Order under which they were procured may be rejected by City and in such case must be replaced by Contractor without delay, subject to terms of warranty under this Agreement or a separate maintenance agreement between the Parties.

Article 4 Scope of Work - Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to provide and license the Software and to perform the Services described in Task Orders issued under this Agreement. The Work may include but is not limited to provision of off-the-shelf Software products (including additional Software Modules), System and Software design, installation, Upgrades, Updates, modification, integration, and testing of Software, SFMTA staff training, and related consulting Services. This Agreement and Task Orders to be issued under this Agreement do not include the planning, research, or development of systems or software or the creation of custom software or systems. The schedule, pricing, Acceptance criteria and testing, and specific warranties for the Work will be stated in Task Orders, with reference to the rates stated in Appendix B, as applicable.

4.2 Task Order Procedures and Requirements. Contractor shall perform the Work under Task Orders the SFMTA issues in accordance with the process described below. The Parties will negotiate the Work, testing standards and procedures, Acceptance requirements, cost and schedules (including Milestones) to perform the Task Order before performing the Work, in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below.

4.2.1 Task Order Request. The SFMTA will provide Contractor a Task Order Request, using the form in Appendix A, which includes the following: (a) the requested scope of Work, including any Deliverables; (b) the estimated deadline to respond to the Task Order

request (i.e., deadline to prepare and submit a Task Order Proposal); and (c) the expected timeline (including any Milestones) to complete the Task Order.

4.2.2 Contractor Request for Information. Upon receiving a Task Order Request, Contractor shall request in writing any information or data it requires to complete the Proposal and perform the Work under the Task Order.

4.2.3 Contractor Proposal. No later than the deadline stated in the Task Order Request, Contractor shall prepare and submit to the SFMTA a Task Order Proposal that includes, at minimum, the following items:

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

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

(c) Key personnel listed by role that Contractor proposes to assign to the Task Order; and, for each key personnel, a description of the task(s) or subtask(s) they will perform, and a resume demonstrating the key personnel is qualified to perform that Work. Resumes shall describe experience performing similar work.

(d) A detailed cost estimate for each task, subtask or deliverable priced either as lump sum, or as an amount-not-exceed based on the Rate Card appended at Exhibit B as agreed in the Task Order. The rates in Exhibit B includes all standard charges but excludes out-of-pocket travel expenses.

4.2.4 Negotiation of Cost and Profit. The SFMTA Project Manager will review the Task Order proposal and negotiate with Contractor pricing for the Task Order. Project management costs include Contractor's preparation of meeting materials, summary of meeting notes, a task monitoring system (e.g., bi-weekly project reports or monthly status updates). See Section 3.5 (Reimbursable Costs) and 2 CFR Part 200 et seq. (Federal Cost Requirements). Contractor's overhead rate charges are included in any Task Order that the Parties agree will be paid lump sum.

4.2.5 Record of Negotiations. The SFMTA Project Manager will document the negotiations and any agreement in a Record of Negotiations and provide a copy of such Record of Negotiations to Contractor.

4.2.6 Notice to Proceed. When the Parties have agreed as to the Scope of Work, compensation, schedule, Milestones, and testing and Acceptance requirements, the

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

4.2.7 Changes to Task Order Pricing. Task Order pricing shall not be modified unless agreed by the Parties.

4.2.8 Presentations and Reports. As provided in the Task Order, Contractor shall provide written progress reports. The costs of said reports shall be included in the price of every Task Order.

4.3 Personnel

4.3.1 Qualified Personnel. Contractor shall use only competent and qualified personnel under the supervision of and in the employment of Contractor to perform the Work. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete and deliver the Work within the schedule specified in a Task Order.

4.3.2 Key Personnel. Any key personnel shall be agreed upon and listed in the relevant Task Order. Contractor shall advise SFMTA as soon as reasonably practical any time one of the key personnel identified in a Task Order is assigned to another project or leaves Contractor's employment. The SFMTA may in turn require Contractor to assign similarly qualified replacement personnel to the Task Order.

4.4 Current Workload and Available Resources. Contractor represents and warrants that its current workload will not impair its ability to perform Work under this Agreement. Contractor shall have all the necessary professional, technical and support personnel available, ready and mobilized to perform actual work as specified in a Task Order.

4.5 Agency's Responsibilities Regarding Submittals. Where a Task Order requires Contractor to provide submittals (that is, not-yet-final Deliverables) for the Agency's review and approval, the SFMTA review and comment on Contractor's submittals as provided in the Task Order. The Agency and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the approved Task Order. The Agency's review and comments of Contractor submittals shall in no way relieve Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve Contractor of its independent responsibility to provide

submittals and deliverables in compliance with local, state and federal codes, regulations and standards.

If Contractor considers certain SFMTA review comments or directives, either written or oral, to require additional Work not included in the agreed Scope of Work of the Task Order, Contractor shall provide SFMTA with either a written request for clarification of the intended Work or a request to amend the Task Order to address the additional Work, in accordance with the procedures specified in Section 4.2 above.

4.6 Subcontracting. Contractor shall perform all Work under this Agreement with its own personnel and shall not use subcontractors.

4.7 Independent Contractor; Payment of Employment Taxes and Other Expenses

4.7.1 Independent Contractor. For the purposes of this Section 4.7.1, “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 Work under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of 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 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 (5) 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.

4.7.2 Payment of Employment Taxes and Other Expenses. Should City's Tax Collector, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.7.2 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City.

4.8 Assignment

4.8.1 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 Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Notwithstanding the above restrictions, in the event of an assignment or novation of this Agreement to a Contractor's Affiliate pursuant to a corporate reorganization, Contractor shall not require City's consent. For purposes of this Agreement, an Affiliate means a company which controls, is controlled by, or is under the common control with Contractor, but only for as long as such control exists; for the purposes of this clause, control is deemed to exist when the company in question has the authority, directly or indirectly through one or more intermediaries, to direct or utilize the voting rights of more than 50% of the stock entitled to vote for directors, general managers or persons performing a similar function, whereby such authority may exist by ownership of such stock or by contract.

4.8.2 The City shall not transfer or assign its rights under this Agreement without Contractor's approval.

4.9 General Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and reasonable care that is required by current, good and sound professional industry procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed. Specific warranties for Work shall be stated in approved Task Orders.

4.10 Liquidated Damages. The Parties may in any Task Order provide for liquidated damages for Contractor's delay.

4.11 Force Majeure. Either Party shall be excused from performing its obligations under the Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including, but not limited to: any incidence of fire or flood; acts of God or the public enemy; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; acts of war (whether declared or undeclared); terrorism; strikes; disease epidemic; any acts, restrictions, regulations, by-laws, refusals to grant a license or permission; prohibitions or measures of any kind on the part of any authority; freight embargoes; delays of either Party's suppliers for like causes ("Force Majeure"), provided satisfactory evidence of such Force Majeure is presented to the other Party, and provided further that such non-performance is unforeseeable, beyond the control, and is not due to the fault or negligence of the Party. Either Party shall use commercially reasonable efforts to remove or overcome the cause of Force Majeure and resume Work as soon as possible.

The Parties shall regularly communicate with each other as to the status of such Force Majeure and shall agree in writing to a restart date when the facts or matters giving rise to such Force Majeure have concluded and further delays are not foreseen. Upon reengagement of the services to be provided hereunder, Contractor and City will formulate and agree upon an updated project schedule, taking into account the time that has passed since the Work stoppage, necessary time to resume or re-create any previously completed tasks due to damaged or missing equipment and any associated time periods for shipment and/or manufacture of equipment.

Article 5 Insurance and Indemnity

5.1 Insurance

5.1.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to Section 5.2 (Indemnification), Contractor must maintain in force, during the full Term of the Agreement, insurance in the following amounts and coverages:

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

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

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

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

(e) Technology Errors and Omissions Liability coverage, with limits of \$5,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

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

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

(f) Cyber and Privacy Insurance with limits of not less than \$5,000,000 per claim. Such insurance shall include coverage for network security and privacy liability coverage for liability arising from theft, dissemination, and/or use of Confidential Information that is stored or transmitted in electronic form.

5.1.2 Additional Insured Endorsements

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

(b) The Commercial Automobile Liability Insurance policy must be endorsed to include (i) Auto Pollution Additional Insured Endorsement naming as Additional Insured City and County of San Francisco, its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

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

5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with

respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit brought.

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

5.1.5 Other Insurance Requirements

(a) Contractor shall provide thirty (30) Days' advance written notice to City of cancellation, non-renewal or reduction of coverage, or immediate notice if Contractor's insurer provides less than thirty (30) Days' notice of cancellation. Notices shall be sent to City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

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

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

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

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

5.2 Indemnification

5.2.1 Indemnity and Defense of Claims

(a) Contractor shall indemnify and defend City and its officers and employees (collectively "Indemnitees") against any and all third party claims for loss, cost, damage, injury, liability for injury to or death of a person (including employees of Contractor) or loss of or damage to tangible property, arising from Contractor's negligence or willful misconduct, including, but not limited to, Contractor's use of facilities or equipment provided by City or others (collectively "Third Party Claim"), except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such third party loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City. The foregoing indemnity and defense obligations shall include, without limitation, reasonable fees of attorneys as may be awarded by a court of competent jurisdiction. Contractor's obligations to defend and indemnify City extend to any Third Party Claim that states allegations related to this Agreement or Contractor's performance of this Agreement, even if such Third Party Claim is or may be groundless, false or fraudulent. Contractor's obligation to defend City arises at the time such Third Party Claim is tendered to Contractor by City and continues at all times thereafter.

(b) The foregoing indemnity and defense obligations shall also extend to and include any claims brought against City by a third party based on any claim that the Software or Documentation infringes the intellectual property rights of that third party. If, in any intellectual property infringement suit concerning the Software or Documentation, the Software or Documentation is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Contractor deems it advisable to do so, Contractor may either: (1) procure the right to continue the use of the same for City; or (2) replace the same with a non-infringing product; or (3) modify said product so as to be non-infringing or, (4) if the foregoing options are not reasonably available, take back the infringing product and refund the purchase price for the infringing product. A replacement or modified product shall perform in all material respects as the (infringing) product to be replaced. The foregoing states the sole and exclusive liability of Contractor to City for intellectual property rights infringement.

(c) The preceding intellectual property infringement indemnity shall not apply to: (1) any infringement that results from City's design of any portion of the Software or Services being procured, (2) any infringement that results from the modification of the Software by anyone other than Contractor, or (3) the use of the Software in conjunction with any other applications, apparatus or material not supplied or approved by Contractor.

(d) The City agrees that:

(1) The City will promptly give written notice to Contractor after obtaining knowledge of any potential or actual claim against City that constitutes a Third Party Claim or otherwise may come under Contractor's defense and indemnity obligations;

(2) The Contractor will have the right to defend City against any such claim with counsel of Contractor's choice. In addition, City may retain separate co-counsel at its sole cost and expense to monitor the defense of the claim, provided, however, that Contractor shall have the right to control the defense of such claim in Contractor's sole discretion;

(3) The City will not consent to the entry of any judgment or enter into any settlement with respect to such claim without Contractor's prior written consent. The City will cooperate with Contractor's reasonable requests in connection with the defense of such claim; and

(e) To the extent reasonably possible, City will in good faith endeavor to mitigate any losses against which Contractor is obligated to indemnify City pursuant to this Section 5.2.

Article 6 Liability of the Parties

6.1 Liability for Use of Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees. The City will not provide equipment to Contractor to perform the Work under this Agreement.

6.2 Waiver of Incidental and Consequential Damages. Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other Party, 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, the Work performed in connection with this Agreement, the use of or inability to use any product, equipment or Software that Contractor has provided to SFMTA under this Agreement, either separately or in combination with any other product, equipment, software or other materials, even if a Party has been advised of the possibility or certainty of such damages.

6.3 Limitation of City's Liability. The City's payment obligations under this Agreement shall be limited to the payment of the compensation provided for in Article 3 of this Agreement.

6.4 Insurance Does Not Limit Liability. No insurance policy covering Contractor's performance under this Agreement shall operate to limit Contractor's liabilities under this Agreement. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitees or Contractors or consultants of any Indemnitees.

6.5 Limitation of Contractor’s Liability. Except for the indemnity obligations contained in Article 5 and liability arising under statutes or ordinances applicable to the City which directly preclude the City from limiting liability under the Contract, Contractor's aggregate liability and obligation to the City concerning disputed Work shall be limited to value of the Work, Services or Software that is subject of the claim under the Task Order (as stated in the Task Order, including any amendments thereto) under which Trapeze performed the Work that gave rise to the claim. For clarity, nothing contained herein shall affect the liability and indemnity obligations existing on the Contractor under the Original Contract and Subsequent Contracts with regards to the Software. To the extent the Contractor is in breach of its ongoing obligations under the Original Contract and Subsequent Contracts, nothing herein precludes the City from pursuing any remedies under those contracts.

Article 7 Payment of Taxes

7.1 Contractor to Pay All Taxes. Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Work 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 City to verify Contractor’s compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles 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 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 City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 Business and Tax Regulations. Contractor agrees that it is obligated to pay all amounts due to City under the San Francisco Business and Tax Regulations Code during the Term of this Agreement and is subject to the requirements of those regulations as they apply to Contractor.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 Exercise of Option. The City may terminate this Agreement, at any time during the Term hereof, for convenience and without cause upon providing ninety (90) days' prior written notice to Contractor. The 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 Contractor Actions. Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third Parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

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

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

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

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

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

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

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

(a) The agreed value of all Work performed, Software, and Services provided up to and including the date of termination, which amount shall include direct costs, overhead and profit.

(b) The agreed value of project close-out costs and profit for the services or Work performed.

(c) The agreed value of any equipment or product ordered by Contractor to fulfill its obligations hereunder which cannot be returned to the supplier for a full refund.

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

8.1.5 Deductions. In arriving at the amount due to Contractor under this Section 8.1, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Work covered by Contractor's final invoice; (ii) any claim which the SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4.

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

8.2 Termination for Default; Remedies

8.2.1 Contractor Default. If Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement shall be an event of default:

3.11	Submitting False Claims
4.8	Assignment
Article 5	Insurance
Article 7	Taxes
10.9	Alcohol Drug-Free Workplace Policy
11.9	Compliance with Laws
12.1.1	Proprietary or Confidential Information of City
12.1.2	Protection of City Employees Private Information

(a) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of thirty (30) days after written notice thereof from City to Contractor.

8.2.2 Any of the following also constitutes a Default Event:

(a) 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.

(b) 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.

8.3 City Default. City's failure to pay Contractor undisputed amounts owed in accordance with this Agreement within thirty (30) Days of receipt of notice from Contractor of City's failure to pay is a Default Event.

8.4 Remedies

8.4.1 Except as to disputed issues that the Parties are addressing as provided in Section 11.5, on and after any Default Event that the defaulting Party has not cured within thirty

(30) Days of the Party’s knowledge of the default, the other Party shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to suspend performance and payment until such Default Event is cured or terminate this Agreement if the defaulting Party cannot cure the Default Event. .

8.4.2 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 either Party may have under applicable law.

8.4.3 Any notice of default must be sent to the defaulting Party’s address set forth in Article 11, and in the manner prescribed in Section 11.1.

8.5 Discontinuance of Services. Contractor agrees that in the event it ceases to sell the Software and/or Services associated therewith (“Discontinuation of Services”), and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, Contractor shall provide to City not less one year notice prior to effecting Discontinuation of Services.

8.6 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.

8.7 Rights and Duties upon Termination or Expiration

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

- 3.3.4 Sales Tax
- 3.7 Payment Limited to Satisfactory Work
- 3.9.4 Grant-Funded Contracts - Disallowance
- 3.10 Audit and Inspection of Records
- 3.11 Submitting False Claims
- 4.7 Independent Contractor; Payment of Employment Taxes and Expenses
- 4.9 General Warranty
- Article 5 Insurance and Indemnity
- Article 6 Liability of Parties
- Article 7 Payment of Taxes
- 8.1.6 Payment Obligation
- Article 9 Rights In Software, Documentation and Deliverables

11.2	Incorporation of Recitals
11.4	Severability
11.5	Dispute Resolution Procedure
11.6	Agreement Made in California; Venue
11.7	Construction of Agreement
11.8	Administrative Remedy for Interpretation of Agreement
11.9	Compliance with Laws
11.10	Severability
Article 12	Data and Security

8.7.2 Subject to the survival of the Sections identified in Section 8.7.1 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.

Article 9 Rights In Software, Documentation and Deliverables

9.1 Software and Documentation License

9.1.1 For each Task Order issued under this Agreement, Contractor will provide the Software and Documentation as specified in the Task Order. Each Task Order will describe the Software Operational Characteristics and other limits of City’s permitted use of the Software and Documentation.

9.1.2 Effective upon the SFMTA’s Acceptance of the Software, Contractor grants to City a perpetual, non-transferable, non-exclusive license to use a production copy of the of the Software in the form supplied by Trapeze and in accordance with the Documentation as of the License Date, restricted to the places of business of City as specified in the Task Order, for City’s own operations, in accordance with the Software Operational Characteristics stated in the Task Order by which Contractor provided the Software to City.

9.1.3 City may make one back-up copy of the Software and Documentation. City may use the production copy of the Software solely for purposes stated in the relevant Task Order, and the Software may not be used on a service bureau or similar basis to process data of others.

9.1.4 The license to use the Trapeze database underlying the Software (“Trapeze Transit Database”) is granted to City solely for the development of internal reports by City and for the integrated operation of the System components. Unless expressly included herein all other access rights to the Trapeze Transit Database are excluded from this Agreement, and City shall not develop or use, or authorize the development or use of, any other interfaces to or from the Trapeze Transit Database. Notwithstanding the previous two sentences, City may develop interfaces the Trapeze Transit Database either (i) on its own based on the information and Documentation provided by Trapeze to extract data for its internal benefit, so long as such interfaces do not write to, edit, modify or materially degrade the performance of the Trapeze

Transit Database or (ii) to a Trapeze-published application programming interface (“API”), which City may license from Trapeze. However, City shall retain ownership of the data (i.e., City Data) that is inputted into the Trapeze Transit Database and any data generated by the System (See Section 12.2 - City Data).

9.1.5 Other than the rights of use expressly conferred upon City by this Agreement, City shall have no further rights to use the Software, Third Party Software, or the Documentation, and shall not copy, reproduce, modify, adapt, reverse engineer, disassemble or translate them, without the express written authority of Trapeze. Trapeze shall retain all rights in patents, copyrights, trademarks, Trade Secrets, and any other intellectual property whether pre-existing or developed under this Agreement. City agrees to: (i) take reasonable steps to maintain Trapeze’s and/or its subcontractors’ intellectual property rights; (ii) not sell, transfer, publish, display, disclose, or make available the Software, Third Party Software or Documentation, or copies of the Software, Third Party Software or Documentation, to third parties except where City may disclose software to designated government representatives under a nondisclosure agreement executed by both parties, (iii) not use or allow to be used, the Software, Third Party Software or Documentation either directly or indirectly for the benefit of any other person or entity.

9.1.6 City shall not develop or use, or authorize the development or use of, any other interfaces to the Trapeze Transit Database or otherwise input data into the Trapeze System without express authorization from Trapeze. The parties agree that the above does not limit existing authorized usage.

9.1.7 Trapeze shall not obtain any ownership rights, title or interest to City Data generated by the use of the Software or contained within the Trapeze Transit Database. For clarity, City shall not obtain any ownership rights, title or interest in the Software, Trapeze Transit Database and associated intellectual property rights, or in any systems developed or employed by Trapeze in providing any Software or Services under the Agreement.

9.1.8 If Contractor provides SFMTA any Third Party Software, related Documentation, or third-party services under this Agreement, such third party suppliers shall retain all rights in their respective patents, copyrights, trademarks, and trade secrets. Where required, City shall enter into a separate end-user-license agreement with the third-party supplier. Contractor shall disclose all Third Party Software used in the System, and any software not so disclosed shall be deemed to be Software that is proprietary to Contractor. Third Party Software products that are included in the Software are listed in Appendix D. The City is an authorized end user of the software listed in Appendix D.

9.2 Software Testing and Acceptance. Software testing and acceptance for the Work shall be stated in the applicable Task Order.

9.3 Reversion. If the Work under any Task Order proves does meet Accepting and Testing criteria or otherwise does not meet SFMTA performance requirements, Contractor shall at no additional charge return the System to the status and operating characteristics accepted by the SFMTA prior to Contractor's performance of Work under that Task Order, if provided in the Task Order.

9.4 Software Warranty

9.4.1 Trapeze warrants the individual Software component to operate in all material respects as specified in the Documentation for a period of ninety (90) days or as otherwise agreed in a Task Order from the date upon which the SFMTA accepts the individual Software component as provided in the applicable Task Order. For any breach of this warranty, City's sole and exclusive remedy and Trapeze's entire obligation hereunder shall be to either repair or replace the defective Software. This warranty does not apply to any Software damaged as a result of any use in any application for which it was not designed or intended, or modification without the prior written consent of Trapeze.

9.4.2 Trapeze warrants that it holds title to all Software licensed and delivered pursuant to this Agreement. Trapeze further warrants that it has full power and authority to grant to City the rights set forth in this Agreement and that neither the performance of the Services by Trapeze nor the use by City of the Software, or any portion thereof, will in any manner constitute an infringement or other violation of any ownership, claim, copyright, trade secret, trademark, patent, invention, proprietary information, nondisclosure, or other rights of any third party. No warranty is provided by Trapeze with respect to any specifically outlined third party licensed products. Separate warranties may be available from the developer, distributor, or publisher of any such third-party licensed products.

9.4.3 The foregoing warranty is in lieu of all other warranties or conditions, express or implied, including but not limited to any implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose other than those outlined in the Purchase Order and any other warranties arising by statute or otherwise in law or from the course of dealing or usage of trade. Trapeze does not represent or warrant that this Software will meet any performance requirement or specification not set forth in the Documentation, or that the operation of the Software will operate 100% error-free or uninterrupted, or that all program errors in the Software can be found in order to be corrected.

9.5 Software Maintenance. Maintenance Services for the Software will be provided under separate agreement.

9.6 Software Audits and Additional License Fees. Trapeze may perform audit(s) on City's use of the Software and Documentation upon giving City written notice of at least ten (10) business days. The City agrees to make the necessary operational records, databases,

equipment, employees and facilities available to Trapeze for the audit(s). The purpose of the audit will be to verify compliance with the terms and conditions of this Agreement. City's use of any of the Software is limited to the Software Operational Characteristics and such other usage restrictions as are set forth in this Agreement and relevant Task Orders. Upon request, SFMTA will run report showing number of uses and application of the System. The sole purpose of any audit will be to verify compliance with the terms and conditions of this Agreement. Should Trapeze find that SFMTA is exceeding the number of vehicles or users authorized under this Agreement or the relevant Task Order, the SFMTA shall compensate Trapeze for those additional vehicles or active users. The amounts and the method of calculating those fees for additional vehicles and active users will be negotiated on a case-by-case basis. City acknowledges that the Software may include license keys, password protection, anti-copying subroutines and other security measures designed to limit usage of the Software to the terms of this Agreement (and any pre-existing and subsequent agreements of the Parties). Such measures shall not interfere with City's normal and permitted operation of the Software as licensed hereunder.

9.7 Remote Access. Upon request, City shall provide Trapeze with the right to establish a remote connection to City's computer(s) on which the Software is installed, so as to enable Trapeze to monitor the operation of the Software. Contractor shall not use such access to disable or otherwise interfere in the operation of the System due to a dispute between the Parties, and any attempt to do so shall be a material breach of the Agreement for which City may seek immediate legal and equitable remedies.

9.8 Documentation and Deliverables. Upon Acceptance by the SFMTA, all Documentation and Deliverables, drawings, plans, specifications, studies, reports, memoranda, computation sheets, computer files, System designs, System documentation, training and workshop materials, and media or other documents prepared by Contractor or its subcontractors in connection with Services performed under this Agreement are licensed to the SFMTA in perpetuity for the use of the Agency in operating and maintaining the System.

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. To the extent that any provisions of this Agreement conflict with governing laws, regulations, or ordinances ("Applicable Laws"), those Applicable Laws shall prevail. However, in instances where Applicable Laws permit variation by agreement, this Agreement shall govern and supersede such Applicable Laws.

10.2 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of 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 City if it becomes aware of any such fact during the Term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Work, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by 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.

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

10.5 Nondiscrimination Requirements

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the applicable 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 City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses

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

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

10.6 Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this Agreement, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.7 Health Care Accountability Ordinance. Contractor is encouraged to comply with Administrative Code Chapter 12Q to provide health benefits described therein.

10.8 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.

10.9 Alcohol and Drug-Free Workplace. City reserves the right to deny access to or require Contractor to remove from City facilities any Contractor personnel 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) and California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq.

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

10.11 Consideration of Criminal History in Hiring and Employment Decisions

10.11.1 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.

10.11.2 The requirements of Chapter 12T shall only apply to a Contractor'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 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.

10.12 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), 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.

10.13 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. The parties agree that the Software to be provided under this Agreement is commercial, off-the-shelf software and in the event City requests changes and modifications to the Software in order to meet its ADA obligations with regards to its employees or the public, Contractor shall be allowed equitable adjustment for such changes and modifications.

10.14 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Work, 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. If City receives public records request, City shall provide Contractor written notice of the request and shall provide Contractor the maximum amount of time available under the applicable public records law to seek a protective order to protect against or limit the scope of disclosure.

10.15 Notification of Legal Requests

10.15.1 Each Party shall promptly notify the other Party upon receipt of any subpoenas, service of process, litigation holds, discovery requests, and other legal requests, excluding confidential information obtained with communications with legal counsel which constitute client privileged information (Legal Requests) related to either Party's Confidential Information, and in no event later than two (2) business days after it receives the Legal Request. A Party shall not respond to Legal Requests related to the other Party without first notifying the other Party other than to notify the requestor that the Confidential Information sought is potentially covered under a non-disclosure provision of this Agreement or other agreement(s) between the Parties. Each Party shall retain and preserve the other Party's Confidential Information in accordance with the Party's reasonable instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders, independent of where City Data is stored.

10.15.2 City shall notify Contractor of any subpoenas, Legal Requests or requests for records issued under a public records law for documents or materials that are

Contractor's Confidential Information. When possible, City will invoke extension of time to respond to such request, so that Contractor may seek take appropriate action.

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: Rosa Esquivel
 Project Manager
 SFMTA
 1 South Van Ness Avenue, 3rd floor
 San Francisco, CA 94103
 rosa.esquivel@sfmta.com

To Contractor: Legal Department
 Trapeze Software Group, Inc.
 5265 Rockwell Drive, NE
 Cedar Rapids, IA 52402
 legal@trapezegrp.com

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice. Any notice given shall be deemed to have been received on the date, which it is delivered if delivered personally, or if emailed on the third business day net following the date the email was sent, or, if mailed, on the fifth business day next following the mailing thereof.

11.2 Incorporation of Recitals. The facts stated in the Recitals at the beginning of this Agreement are incorporated into and made part of this Agreement.

11.3 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 mutually approved by the Parties as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form). Modifications of this Agreement require agreement and approval of both Parties and shall be in writing.

11.4 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.

11.5 Dispute Resolution Procedure

11.5.1 Dispute Negotiation and Escalation; Alternative Dispute Resolution

(a) The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. The Parties shall first attempt to resolve disputes and controversies by discussion and negotiation between the SFMTA and Contractor's Project Managers. Disputes not resolved by the Parties' Project Managers may be elevated by either Party to the SFMTA's Chief Technology Officer and Contractor's General Manager.

(b) If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the SFMTA's Chief Technology Officer a written request for administrative review and documentation of Contractor's claim(s). Upon such request, the SFMTA's Chief Technology Officer shall promptly issue an administrative decision in writing, stating the reasons for the SFMTA's position, denial of Contractor's contract claim, or other action taken. The Parties may at any time agree to submit the dispute to a mediator selected by the Parties. If the Parties are unable to resolve the dispute through negotiation or mediation, Contractor may submit a claim to City in accordance with Government Code section 900 et seq.

(c) Unless otherwise agreed in writing, during the dispute resolution process, Contractor agrees to continue performing non-disputed work as long as SFMTA continues to make payments for such non-disputed work. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement.

11.5.2 Government Code Claim Requirement. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by 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.

11.6 Agreement Made in California; Venue. This Agreement is made and shall be performed in San Francisco, California. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California without regard to conflicts of laws and applicable federal law. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco, California.

11.7 Construction of Agreement

11.7.1 Entire Agreement. This Contract and Task Orders issued under it set forth the entire agreement between the Parties, which supersedes all other oral or written provisions. All Included Appendices to this Agreement (as listed in Section 11.13) are incorporated by reference as though fully set forth. This Agreement may be modified only as provided in Section 11.3 (Modification of this Agreement).

11.7.2 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.

11.7.3 Order of Precedence. Contractor agrees to perform the Work described in Task Orders under this Agreement, in accordance with the terms and conditions of this Agreement. A Task Order is subordinate to the terms and conditions stated in this document. A Task Order shall not modify the terms and conditions of this Agreement except to describe the Scope of Work that Contractor shall perform under said Task Order, Milestones, Deliverables and delivery dates, and Contractor's compensation for performing the Work described in the Task Order. The terms and conditions of this Agreement stated in this document may only be amended by a Contract Modification, as provided in Section 11.3.

11.7.4 Validity of Existing Contracts. This Agreement shall not amend, supersede, or otherwise modify any previous contracts between City and Trapeze. Any products, including but not limited to services and software procured prior to the Effective Date of this Agreement shall remain subject to the terms and conditions of the respective contracts under which Contractor provided those services and/or software to SFMTA. In instances where Services or Software related to those previously procured items are performed or delivered under the scope of this Agreement, as specified and described in a Task Order issued hereunder, the terms of this Agreement shall apply solely to that specific portion of the Services or Software procured under this Agreement.

11.7.5 Titles. All Article and Section titles are for reference only and shall not be considered in construing this Agreement.

11.8 Administrative Remedy for Interpretation of Agreement. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to Contractor taking any other action, escalating the dispute, or resorting to any other legal remedy, be referred to the SFMTA's Chief Technology Officer who shall decide the meaning and intent of the Agreement.

11.9 Compliance with Laws. Contractor shall keep itself fully informed of City's Charter, codes, ordinances and duly adopted rules and regulations of 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 applicable regulations and laws as they may be amended from time to time.

11.10 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.

11.11 MacBride Principles – Northern Ireland. By signing this Agreement, Contractor confirms that Contractor has read and understood that City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles, and urges such companies to do business with corporations that abide by the MacBride Principles.

11.12 Approval by Counterparts. This Agreement and Task Orders issued under it may be approved by the signatories by counterparts delivered electronically or by first class mail, which when properly executed by each respective Party and read together shall comprise a fully executed contract.

11.13 Included Appendices. The following documents appended to this Agreement are incorporated by reference into this Agreement:

- Appendix A: Task Order Request Form
- Appendix B: Rate Card
- Appendix C: FTA Requirements
- Appendix D: Third Party Licenses

11.14 FTA. The federal contract requirements appended to this Agreement are attached to provide notice to Contractor of requirements may apply to the extent that this Agreement, Contractor's business activities, or the Software and other deliverables that Contractor will

provide to the SFMTA under this Agreement fall within the scope of those requirements. Contractor reserves the right to challenge the application of any of those requirements should the City or the federal government seek to enforce any of those requirements that Contractor may assert do not apply to this Agreement, Contractor's performance of this Agreement, or to the products and Software that Contractor will provide to the SFMTA under this Agreement.

Notwithstanding anything in this Agreement to the contrary, the parties agree that Trapeze enters this Agreement solely as a contractor and not as a subgrantee or any other classification. Trapeze shall be subject only to those federal, state, and local government requirements that are applicable by law to Trapeze's performance of this Agreement. The products sold and software licensed hereunder are off-the-shelf products that Trapeze developed prior to and independent of this Agreement. Should any change in federal, state, or local government requirements that are mandatorily applicable by law cause the scope, schedule, or deliverables of a Task Order to change, Trapeze may request an equitable adjustment of schedule or compensation for work that is outside the scope of a lump-sum Task Order.

Article 12 Data and Security

12.1 Nondisclosure of Private, Proprietary or Confidential Information

12.1.1 Proprietary or Confidential Information. Each Party understands and agrees that, in its performance of this Agreement or in contemplation thereof, a Party may have access to private or confidential information which may be owned or controlled by the other Party and that such information may contain proprietary or confidential details, (including City Employee Information, City Data, and Contractor Confidential Information and Trade Secrets) the disclosure of which to third parties may be damaging to the disclosing Party. The Parties agree that, subject to the California Public Records Act, the San Francisco Sunshine Ordinance and any other applicable public records laws, or lawful orders of a court or regulatory authority, all information disclosed by one Party to the other Party shall be held in confidence and used only in the performance of the Work or enforcement of the Agreement. The Parties shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect their own proprietary data. The Parties acknowledge that any Confidential Information disclosed to either Party pursuant to this Agreement shall remain the property of the respective Party. Except and to the extent that disclosure is required by law, each Party shall maintain in confidence and not disclose the other Party's Confidential Information, directly or indirectly, to any third party without the other Party's prior written consent. Each Party further acknowledges that a breach of the provisions of this Section may cause irreparable harm to the other Party for which money damages would be inadequate and would entitle the non-breaching Party to injunctive relief and to such other remedies as may be provided by law.

12.1.2 Protection of City Employees Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code

Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, City may terminate the Contract, bring a false claim action against Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Contractor.

12.2 City Data

12.2.1 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data are the exclusive property of City. Contractor shall have no rights or claim to City Data, and shall use City Data only to implement and maintain the System.

12.2.2 Access to City Data. City shall at all times have access to and control of City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time (other than planned maintenance periods), at no additional cost at the SFMTA’s facilities. Contractor shall not include in the Software any code, tool, or process that would disable the System and otherwise prevent the Agency from accessing City Data.

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

12.2.4 Disposition of City Data. Upon written request of City, and pursuant to any document retention period of Contractor and as required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) Days, return all City Data given to or collected by Contractor on City’s behalf. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within thirty (30) Days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement. Contractor shall provide City with written certification that such

purge occurred within five (5) Days of the purge. Secure disposal shall be accomplished by “clearing,” or “purging” in a non-readable format.

12.2.5 Contractor’s Confidential Information and Trade Secrets.

Contractor’s Confidential Information includes System designs, System design processes and procedures, formula, any written, graphic or machine-readable information and code, including but not limited to technical or non-technical data, patents, patent applications, copyright, copyright applications, research, product or service plans, developments, inventions, processes, designs, drawings, patterns, compilations, engineering methods, techniques, devices, formulae, software (including source and object code), algorithms and other materials that Contractor designates in writing as its Confidential Information.

City will maintain Contractor’s Confidential Information in confidence and not disclose said information to any third party without Trapeze’s prior written consent, except and the to the extent that disclosure is required by law. City shall prohibit any persons other than City employees from using any components of the Software in a manner that is not authorized by this Agreement and shall limit City employees’ access to said information to City’s employees who are bound to respect the confidentiality of such information. These obligations of confidentiality will survive the expiration or termination of this Agreement.

Contractor’s Confidential Information does not include any information that: (i) is or becomes generally known to the public through no fault of City; (ii) is obtained without restriction from an independent source having a bona fide right to use and disclose such information, without restriction as to further use or disclosure; (iii) is independently developed by someone other than City; (iv) Trapeze approves for unrestricted release by written authorization; or (v) is a public record or public information by statute or ordinance.

CITY	CONTRACTOR
<p>San Francisco Municipal Transportation Agency</p>	<p>Trapeze Software Group, Inc.</p>
<p>_____ Jeffrey P. Tumlin Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary, to the Board</p>	<p>_____ Signature</p> <p>Name: Teresa Domingo</p> <p>Title: Group Leader Authorized Representative 5265 Rockwell Drive, NE Cedar Rapids, IA 52402</p>
<p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney</p>	<p>City Supplier Number: 0000009230</p>

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Reviewed by: _____ Trinh Nguyen, Manager Contracts & Procurement, Federal	Date _____
Reviewed by: _____ Virginia Harmon, Contract Compliance Office	Date _____
Approved by: _____ Division Director, Title	Date _____

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

Appendix B Rate Card

Resource Type	2023		2024		2025		2026		2027	
	Daily Offsite Rate	Daily Onsite Rate w Expenses†	Daily Offsite Rate	Daily Onsite Rate w Expenses†	Daily Offsite Rate	Daily Onsite Rate w Expenses†	Daily Offsite Rate	Daily Onsite Rate w Expenses†	Daily Offsite Rate	Daily Onsite Rate w Expenses†
Project Management (PM)	2,563	3,344	2,691	3,511	2,825	3,686	2,966	3,871	3,115	4,064
Implementation Consultant (IC)	2,438	3,219	2,559	3,380	2,687	3,549	2,822	3,726	2,963	3,912
Development (Dev)	2,813	3,594	2,953	3,773	3,101	3,962	3,256	4,160	3,419	4,368
QA/Documentation	2,188	2,969	2,297	3,117	2,412	3,273	2,532	3,437	2,659	3,609

†Does not include transportation costs

2028		2029		2030		2031		2032	
Daily Offsite Rate	Daily Onsite Rate w Expenses†	Daily Offsite Rate	Daily Onsite Rate w Expenses†	Daily Offsite Rate	Daily Onsite Rate w Expenses†	Daily Offsite Rate	Daily Onsite Rate w Expenses†	Daily Offsite Rate	Daily Onsite Rate w Expenses†
3,270	4,268	3,434	4,481	3,606	4,705	3,786	4,940	3,976	5,187
3,111	4,108	3,266	4,313	3,430	4,529	3,601	4,756	3,782	4,993
3,590	4,587	3,769	4,816	3,957	5,057	4,155	5,310	4,364	5,575
2,792	3,789	2,931	3,978	3,078	4,177	3,232	4,386	3,395	4,606

Appendix C

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 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 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 Agreement between 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. Contractor agrees to provide 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 Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. 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. 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 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

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement. 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 City, Contractor, or any other Party (whether or not a Party to that contract) pertaining to any matter resulting from the underlying contract.
- B. 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, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the
- B. Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- C. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:
 - 1. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, 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. 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, 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, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, 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, 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, Contractor agrees to comply with any implementing requirements FTA may issue.
- D. 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, 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:

Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by 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 – not applicable to this Agreement)*

- 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, 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 Contractor’s status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), 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. 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 – not applicable to this Agreement*)

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

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

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

- 3. FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, 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 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, 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 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. 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 City or Contractor and incorporated into the work carried out under this Agreement, provided that City or Contractor identifies the data in writing at the time of delivery of the work.
- 7. Application to Subcontractors.** Unless FTA determines otherwise, 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. 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 Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), 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 non-construction 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 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 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 - 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

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 – not applicable to this Agreement)*

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

B. 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 year – not applicable to this Agreement.)*

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

B. 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 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. Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance

provided by FTA.

XV. DRUG AND ALCOHOL TESTING

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XVIII. BUY AMERICA *(not applicable to procurement of software products and services – not applicable to this Agreement)*

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products, and construction materials (excluding cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives), used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XIX. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS *(not applicable to procurement of software products and services – not applicable to this Agreement)*

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 Working Days following the date of loading for shipments originating within the United States or within 30 Working Days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board"

commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XX. RECYCLED PRODUCTS*(not applicable to procurement of software products and services – not applicable to this Agreement)*

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

XXI. PROHIBITION AGAINST USE OF CONTRACT FUNDS FOR COVERED TELECOMMUNICATIONS EQUIPMENT

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

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

XXII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

- A. 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, 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, 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 Contractor to the extent the Federal Government deems appropriate.
- B. 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 Contractor, to the extent the Federal Government deems appropriate.
- C. 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.

XXIII. FLY AMERICA

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. 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. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XXIV. 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. 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.

XXV. 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. 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, 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. 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, 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. 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, 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. 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.

XXVI. 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.

XXVII. 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.

XXVIII. 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.

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

Certification required (See Appendices).

XXX. PROMPT PAYMENT (*not applicable unless Contractor uses subcontractors*)

- A. In accordance with SFMTA's SBE/DBE Program, no later than three days from the date of Contractor's receipt of progress payments by SFMTA, Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subconsultants. Unless the prime consultant notifies the CCO Director in writing within 10 working days prior to receiving payment from City that there is a bona fide dispute between the prime 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.
- B. 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.

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

As provided by 49 U.S.C. § 5325(k):

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

Appendix D

THIRD PARTY LICENSES

For information regarding the version of the library, refer to Software in the System.

The Software contains the following Third Party Software, which the City is an authorized end-user.

Module	License Type	Source Location	Description
AjaxPro.NET	MIT	3rdPartyDepends\AjaxPro	.NET wrapper for AJAX functionality
Albireo.Base32	MIT	3rdPartyDepends\Albireo.Base32	Base32 Encoding/Decoding
Angular Google Analytics	MIT License	Apps\Public\Common\JavaScript	
angular-datatables	MIT License	Apps\Public\Common\JavaScript\modules	
Angular-hotkeys	MIT License (c) 2016 Wes Cruver	Apps\Public\Common\JavaScript	
angular-loading-bar	MIT License (c) 2015 Wes Cruver	Apps\Public\Common\JavaScript\modules	
angular-recaptcha	MIT License (c) 2016 VividCortex	Apps\Public\Common\JavaScript\modules	
angular-translate	MIT License (c) 2016 The angular-translate team, Pascal Precht	Apps\Public\Common\JavaScript\modules	
Angular-ui	MIT License	Apps\Public\Common\JavaScript	
Angular-ui-mask	MIT License	Apps\Public\Common\JavaScript	
angular-validation-match	MIT License	Apps\Public\Common\JavaScript\modules	
BCGCBPro	Paid Commercial - In Good Standing - 2019	3p\BCGCBPro	UI Library
Boost ASIO	Custom License - BSD Inspired		Networking
Bootstrap-timepicker	MIT License (c) 2013 Joris de Wit	Apps\Public\Common\JavaScript	
BruTile	Apache 2.0	3rdPartyDepends\Mapping Components\BruTile	BruTile is a .NET library to access tile services like OpenStreetMap and Bing
Business Objects CrystalReports	Paid Commercial - Version 8, 8.5	3p\CrystalReports\8*	Reporting Library

Module	License Type	Source Location	Description
Business Objects CrystalReports	Paid Commercial - Version 11, 11.5	3p\CrystalReports\11*	Reporting Library
Business Objects CrystalReports	Paid Commercial (NUL – Named User License,)	3rdPartyDepends\Crystal	Reporting Library – Act as OEM distributor
ckeditor.js	LGPL	InfoCenterBase\InfoCenter\scripts\lib\ckeditor	A WYSIWYG editor
CPPUnit	LGPL3	3p\CppUnit	Unit Testing Library
Crystal Reports	Commercial – NUL	3rdPartyDepends\Crystal\RuntimeAssemblies	Reporting SAP runtime (copied from installed runtimes). See Confluence for more info.
Css-vars-ponyfill	MIT License (c) 2018-2021 John Hildenbiddle	Apps\Public\Common\JavaScript	
Curl	MIT License (-ish)	3p\Curl	Command Line Networking Tool3p\libcurl
DayPilot	Paid Commercial	3rdPartyDepends\DayPilot	.NET HTML Event Calendar Component.
decimal.js	MIT	InfoCenterBase\InfoCenter\scripts\lib\decimal	An arbitrary-precision Decimal type for JavaScript
DocumentFormat.OpenXml	MIT	3rdParty (within Dataflow utility)	The Open XML SDK provides tools for working with Office Word, Excel, and PowerPoint documents
Es6-promise	MIT License (c) 2014 Yehuda Katz, Tom Dale, Stefan Penner and contributors	Apps\Public\Common\JavaScript	
esri-leaflet.js	Apache 2.0	InfoCenterBase\InfoCenter\scripts\lib\leaflet\plugins\esri-leaflet	Plug-in for leaflet (mapping web tool)
FixedColumns	MIT License (c) 2010-2014 SpryMedia Ltd	Apps\Public\Common\JavaScript	
fullcalendar.js	Generic (Permissive)	InfoCenterBase\InfoCenter\scripts\lib\fullcalendar	Calendar building library for JS
GeoJSON.NET	MIT	3rdPartyDepends\GeoJSON.Net	.NET library for the RFC 7946 The GeoJSON Format
Google AngularJS	MIT License (c) 2010-2020 Google LLC.	Apps\Public\Common\JavaScript	
Google Protobuff	BSD		

Module	License Type	Source Location	Description
Google Protocol Buffer 2	Apache License (c) 2010 The Libphonenumber Authors	Apps\Public\Common\Java script	
Google Test Framework	BSD License	3p\GoogleMock; 3p\GoogleTest	Unit Testing Library
Iframe-resizer	MIT License	Apps\Public\Common\Java script	
International Telephone Input	MIT License	Apps\Public\Common\Java script	
Izenda (7)	Generic (Subscription yearly)	3rdParty (within install files)	Adhoc reporting – Subscription yearly based for embedding Izenda libraries
jQuery	MIT License (c) OpenJS Foundation and other contributors	Apps\Public\Common\Java script	Core web event standardization framework, Web component library (jQuery-UI included)
jQuery DataTables	MIT License (c) 2008-2015 SpryMedia Ltd	Apps\Public\Common\Java script	
jQuery ScrollTo	MIT License (c) 2007-2015 Ariel Flesler	Apps\Public\Common\Java script	
jwt-cpp	MIT License	3p\jwt-cpp	JWT Parser
Leaflet.js	Generic	InfoCenterBase\InfoCenter\scripts\lib\leaflet	Web mapping library
libargon2	Apache 2.0	3rdPartyDepends\Argon2\libargon2	Hashing library for Argon2 hashing algorithm (security)
Liphsoft.Crypto.Argon2	MIT	3rdPartyDepends\Argon2\Liphsoft.Crypto.Argon2	.NET wrapper for Argon2 (crypto) library
Lucene.NET	Apache 2.0	3rdPartyDepends\Apache\Lucene.Net	Lucene indexing library
MapsUI	MIT	Various (Mobile)	Mobile mapping component
Microsoft .NET Runtime	MIT	Installation Dependency	Core framework dependency
Microsoft C++ Runtime	Unclear (widely distributed for free)	Installation Dependency	Core framework dependency
Microsoft.Graph	MIT	Various	Authentication for Microsoft (integrations, OAuth2 support)
Microsoft.Identity	MIT	Various	Authentication for Microsoft (integrations, OAuth2 support)

Module	License Type	Source Location	Description
Mobile-detect	MIT License (c) 2013, Heinrich Goebel	Apps\Public\Common\Java script	
Moment.js	MIT	InfoCenterBase\InfoCenter\scripts\lib\moment	Date and time web JS library
MomentJS	MIT License		
NewtonSoft.JSON	MIT	3rdPartyDepends\Newtons oft	.NET JSON serialize/deserialize library
ngHttp2	MIT License (c) 2013, 2014 Tatsuhiro Tsujikawa	3p\ngHttp2	C++ Implementation of HTTP/2
ngstorage	MIT License (c) 2015 Gias Kay Lee	Apps\Public\Common\Java script\modules	
OpenSSL	Apache 2.0	3p\openssl	Cryptography, Transport Security and Certificate Management
PDFLib	Paid Commercial (In Violation) -Per Developer; Per Installation (Instance); Runtime License (User)	3p\PDFlib	PDF Authoring
Sentry Spelling	Paid Commercial (In Violation)	\3p\SentrySpelling	
slickgrid.js	MIT	InfoCenterBase\InfoCenter\scripts\lib\slickgrid	Table web library
Twitter Integration	Unlicensed	3p\Twitter	Twitter Integration + Curl
vAccordion	MIT License	Apps\Public\Common\Java script\modules	
wkhtmltopdf	GNU LESSER GENERAL PUBLIC LICENSE	3p\wkhtmltopdf	wkhtmltopdf are open source (LGPLv3) command line tools to render HTML into PDF used for reporting
Xamarin	MIT	Various (Mobile)	Mobile framework, deployment to various platforms. In deprecated state for MAUI (Microsoft)
Xerces-c	Apache License 2.0	3p\include\xercesc; 3p\Xerces-C	XML Parser
XLTS for AngularJS	Comercial License (c) 2022 XLTS.dev All Rights Reserved	Apps\Public\Common\Java script	Long term support for Angular JS
Xml2json	Apache License (c) 2011-2013 Abdulla Abdurakhmanov	Apps\Public\Common\Java script	

Module	License Type	Source Location	Description
XMLStarlet	MIT License (c) 2002-2004 Mikhail Grushinskiy	3p\XMLStarlet	XML Transformation
ZLib	MIT License(C) 1995-2023 Jean-loup Gailly and Mark Adler	3p\zlib	Compression Library