

THIS PRINT COVERS CALENDAR ITEM NO. : 12

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute three contracts with Fehr & Peers and three contracts with Kittelson & Associates, Inc. for As-Needed Environmental and Transportation Analysis and Documentation services for a term not to exceed May 20, 2018, and the option to extend for three additional one year terms at the Director of Transportation's sole discretion for a total not to exceed amount is \$9,325,892.

SUMMARY:

- SFMTA requires Consultant assistance in delivering numerous SFMTA projects vital to meeting the goals and objectives of Vision Zero, MUNI Forward, and the Transit First Policy and Complete Streets policy, in addition to supporting the SFMTA's Strategic Plan and the City's General Plan principles.
- The consultant services will generally include CEQA and NEPA review, transportation analysis and engineering, and transportation data collection and analytics.
- The RFPs were issued with the following fund sources: (1) Local, (2) Federal Transit Administration (FTA), and (3) Federal Highway Administration (FHWA).
- Fehr & Peers and Kittelson & Associates, Inc. were the two top-ranked proposers.

ENCLOSURES:

1. SFMTAB Resolution
2. Contracts with Fehr & Peers
3. Contracts with Kittelson & Associates, Inc.

APPROVALS:

DATE

DIRECTOR		<u>5/9/16</u>
SECRETARY		<u>5/9/16</u>

ASSIGNED SFMTAB CALENDAR DATE: May 17, 2016

PURPOSE

In November 2014, voters passed two ballot measures that significantly increased investment in our local transportation network. The Transportation and Road Improvement Bond, Proposition A on the November 2014 ballot, dedicates \$500 million to critical transportation projects citywide. Proposition B adjusts funding for transportation each year based on population growth, providing roughly \$30 million per year. All this increased investment is happening through Transportation 2030, a local investment program that is making it safer and easier to get around as the city grows. The benefits of these investments will be felt in every San Francisco neighborhood and will move the City toward Vision Zero, the City’s commitment to eliminate traffic deaths by 2024. The first bond sale for \$67 million was completed in summer 2015 and the second sale is anticipated in 2017. In order to expeditiously deliver critical transportation projects and support existing programs that are growing (e.g., Traffic Calming, Car Share, SFPark), the SFMTA requires additional resources. Specifically, through an As-Needed contracts, the SFMTA can utilize consultant resources to help plan, design and evaluate projects. Additionally, the As-Needed contracts will allow the SFMTA to utilize consultant expertise and unique skill sets in areas such as data analytics and environmental review under the National Environmental Protection Act.

In order to facilitate project delivery, project evaluation and transportation policy development through As-Needed contracts, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors is requested to adopt the attached resolution authorizing the Director of Transportation to execute the following contracts:

Contract Number	Type of Funding	Not to Exceed Amount	Firm name
SFMTA – 2016-03/1	LOCAL	\$2,797,767	Fehr & Peers
SFMTA – 2016-03/2	LOCAL	\$2,797,767	Kittelson & Associates, Inc.
SFMTA – 2016-11/1	FTA	\$1,398,884	Fehr & Peers
SFMTA – 2016-11/2	FTA	\$1,398,884	Kittelson & Associates, Inc.
SFMTA – 2016-12/1	FHWA	\$466,295	Fehr & Peers
SFMTA – 2016-12/2	FHWA	\$466,295	Kittelson & Associates, Inc.

All six contracts would be for a total of \$9,325,892 and a term not to exceed May 20, 2018, with the option to extend for three additional one year terms at the Director of Transportation’s sole discretion.

GOAL

This action is consistent with the SFMTA 2013-2018 Strategic Plan.

- Goal 2:** Make transit, walking, bicycling, taxi, ridesharing & carsharing the preferred means of travel
 - Objective 2.2: Improve transit performance.
 - Objective 2.3: Increase use of all non-private auto modes.

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Objective 2.4: Improve parking utilization and manage parking demand.

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

Objective 3.1: Reduce the Agency's and the transportation system's resource consumption, emissions, waste, and noise.

Objective 3.2: Increase the transportation system's positive impact on the economy.

Objective 3.3: Allocate capital resources effectively.

Objective 3.4: Deliver services efficiently.

DESCRIPTION

The SFMTA's Sustainable Streets Division provides multi-modal transportation planning, engineering and operational improvements to San Francisco's transportation system to support sustainable community and economic development. The Division achieves this by closely coordinating the planning, design, engineering and construction of roadway improvements (including transit, bicycle, pedestrian, motor vehicle, parking and taxi facilities) to meet the goals and objectives of Vision Zero, MUNI Forward, the Transit First Policy and Complete Streets policy, as well as to support the City's General Plan principles. The Division manages 39 parking facilities, enforces San Francisco's parking regulations, maintains safe and secure SFMTA bus and rail lines, and enforces compliance of transit fares.

In order to effectively lead and facilitate delivery of numerous SFMTA projects, the Division requires the assistance of consulting resources. Current examples of project initiatives that the consultant team would assist with include but are not limited to:

- 8th/Townsend Improvements: intersection operation analysis and recommendations for safety and operational improvements;
- Bicycle Corridor Planning Analysis: traffic analysis to support planning and design of projects on corridors such as 5th, 7th, and 11th streets, 8th Avenue, Grove Street, Turk Street, etc.;
- Taylor Safety Project: data collections and analysis, and development of design concepts;
- Embarcadero from Powel to AT&T Park: development of conceptual design related to a protected bikeway;
- Brannan Street Paving Coordination: traffic analysis, including signal timing to support the paving project;
- Car Share Evaluation: drafting evaluation plan, collecting and analyzing data and drafting recommendations for next steps;
- Data Collection and Analytics: traffic counts to support traffic calming projects, data collection and analysis for project evaluation and to inform future project design and policy (e.g., multimodal counts).

In the fall of 2015, SFMTA advertised RFP #SFMTA 2016-03 (Local), RFP #SFMTA 2016-11 (FHWA) and RFP #SFMTA 2016-12 (FTA) soliciting proposals from firms with expertise in environmental review, transportation engineering, planning, and research to provide as-needed services in all three of the following topic areas:

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1. Environmental analysis and documentation services (CEQA and NEPA);
2. Transportation analysis and engineering services; and
3. Transportation data collection and analytics.

The RFP called for selection of up to two firms and award of up to two contracts for an original term of two years. The City, in its sole, absolute discretion, shall also have the option to extend the term for a period of up to three, one year option years. The selected consultants will work in collaboration with SFMTA to deliver projects included in the CIP. The table below identifies the issue dates of the RFPs, the firms that responded and the Local Business Enterprise (LBE), Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) compliance goals.

Fund Source	Date RFP Issued	Number of Proposals Received	Participation Goal
LOCAL	October 22, 2015	4 (AECOM, Fehr & Peers, Kittelson and CDM Smith)	LBE: 25%
FHWA	November 17, 2015	4 (AECOM, Fehr & Peers, Kittelson, and Stantec)	DBE: 16%
FTA	December 3, 2015	4 (AECOM, Fehr & Peers, Kittelson, and Stantec)	SBE: 25%

A single panel comprised of staff from the SFMTA, the SF Planning Department, and the San Francisco County Transportation Authority conducted a two-stage evaluation process for all RFPs, including detailed review of the written proposals followed by an oral interview at which proposers responded to a standard set of questions. Subsequent to the selection process, staff entered into and successfully concluded contract negotiations with the two consulting firms.

Panelists' scoring of the written proposals and oral interviews were submitted to the SFMTA Equal Employment Opportunity office (EEO), and on March 4, 2016, EEO certified the final scores and ranking order of the proposals for all three RFPs. Fehr & Peers and Kittelson & Associates, Inc. ranked first and second, respectively in the scoring for all three RFPs. Fehr & Peers and Kittelson & Associates, Inc. will be the prime consultants supported by a wide array of subconsultants, as listed in the table below.

<u>Fehr & Peers (Prime Consultant)</u>	<u>Kittelson & Associates, Inc. (Prime Consultant)</u>
ICF International	Iteris, Inc.
Nelson-Nygaard Consulting Associates, Inc.	ICF Jones & Stokes
LCW Consulting	Fall Line Analytics
Adavant Consulting	Panorama Environmental, Inc.
MSA Design & Consulting	Seifel Consulting
Walker Parking Consultants	Baymetrics
Ramboll Environ	Adavant Consulting

<p>AECOM Schaller Consulting Fall Line Analytics Ward & Associates Panorama Alfred Williams Consulting VerPlanck Historic Preservation Consulting Prevision Design Geotechnical Consultants, Inc. Streetlight Data IDAX INRIX</p>	<p>VerPlanck Historic Preservation Consulting Geotechnical Consultants, Inc. Alfred Williams Consultancy, LLC PreVision Design Traffic Research & Analysis, Inc.</p>
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Pursuant to the RFP, all work under the contracts will be defined within approved Task Orders, on an as-needed basis. At the discretion of the Director of Sustainable Streets or his designee, Task Orders will be issued to consultants to perform work. In certain circumstances, Task Orders may be issued following a request for bids from both consultants. The Director or his designee will select the preferred bid based on a determination of which bid provides the best value to the SFMTA. Neither consultant is guaranteed assignment of Task Orders under their contract.

PUBLIC OUTREACH

No public outreach is required however, the Division will conduct public outreach as appropriate for work performed under each Task Order issued from the six contracts.

ALTERNATIVES CONSIDERED

The alternative is to continue delivering projects using resources only available within SFMTA coupled with contracting pursuits for individual projects. This approach does not support the Division’s goal of delivering projects in a timely and effective manner because contracting for individual projects requires additional time and can be challenging to do for relatively small efforts, particularly when they require immediate attention. Continuing to pursue the adopted Projects with only available City resources is not recommended.

FUNDING IMPACT

The consultant contracts will be primarily funded from State and local fund sources, such as Proposition K sales taxes, and possibly federal funding (FTA and/or FHWA). The total for both contracts is up to \$9,325,892 over the course of the two years; however, neither consultant is guaranteed assignment of Task Orders under their contract.

ENVIRONMENTAL REVIEW

On April 26, 2016, the SFMTA, under authority delegated by the Planning Department, determined

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that the As-Needed Environmental and Transportation Analysis and Documentation Services contract 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

At its November 16, 2015 meeting, the Civil Services Commission approved Personnel Services Contract request No. 42016-15/16 for \$9,800,000 in connection with these contracts. The City Attorney’s Office has reviewed the contract, and there are no other approvals required.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute the following six contracts:

- Contract #SFMTA-2016-03/1 (LOCAL) for As-Needed Environmental and Transportation Analysis and Documentation services with Fehr & Peers, for a total amount not to exceed \$2,797,767;
- Contract #SFMTA-2016-03/2 (LOCAL) with Kittelson & Associates, Inc. for As-Needed Environmental and Transportation Analysis and Documentation services, for a total amount not to exceed \$2,797,767;
- Contract #SFMTA-2016-11/1 (FTA) for As-Needed Environmental and Transportation Analysis and Documentation services with Fehr & Peers, for a total amount not to exceed \$1,398,884;
- Contract #SFMTA-2016-11/2 (FTA) with Kittelson & Associates, Inc. for As-Needed Environmental and Transportation Analysis and Documentation services, for a total amount not to exceed \$1,398,884;
- Contract #SFMTA-2016-12/1 (FHWA) for As-Needed Environmental and Transportation Analysis and Documentation services with Fehr & Peers, for a total amount not to exceed \$466,295; and
- Contract #SFMTA-2016-12/2 (FHWA) with Kittelson & Associates, Inc. for As-Needed Environmental and Transportation Analysis and Documentation services, for a total amount not to exceed \$466,295.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The mission of the SFMTA's Sustainable Streets Division is to plan, design, implement, and maintain the city's transportation infrastructure and regulations to support San Francisco's mobility needs as the city changes and grows; and,

WHEREAS, The Division requires the assistance of consulting resources to deliver multi-modal transportation planning, engineering and operational improvement projects in a timely and effective manner; and,

WHEREAS, On October 22, 2015, the SFMTA advertised RFP #SFMTA 2016-03 (LOCAL) soliciting proposals from firms with expertise in environmental review, transportation engineering, planning, and research to provide as-needed services in the areas of (1) environmental analysis and documentation, (2) transportation analysis and engineering, and (3) transportation data collection and analytics; and

WHEREAS, The SFMTA received four responsive proposals in response to each of RFPs; and

WHEREAS, On November 17, 2015, the SFMTA advertised RFP #SFMTA 2016-11 (FHWA) soliciting proposals from firms with expertise in environmental review, transportation engineering, planning, and research to provide as-needed services in the areas of (1) environmental analysis and documentation, (2) transportation analysis and engineering, and (3) transportation data collection and analytics; and

WHEREAS, The SFMTA received four responsive proposals in response to the RFP; and

WHEREAS, On December 3, 2015, the SFMTA advertised RFP #SFMTA 2016-12 (FTA) soliciting proposals from firms with expertise in environmental review, transportation engineering, planning, and research to provide as-needed services in the areas of (1) environmental analysis and documentation, (2) transportation analysis and engineering, and (3) transportation data collection and analytics; and

WHEREAS, The SFMTA received four responsive proposals in response to the RFP; and

WHEREAS, An evaluation panel comprised of staff from the SFMTA, the SF Planning Department, and the San Francisco County Transportation Authority reviewed the proposals received for all three RFPs, interviewed the proposers and ranked the proposals; and

WHEREAS, Fehr & Peers and Kittelson & Associates, Inc. ranked first and second, respectively in the scoring for all three RFPs; and

WHEREAS, The SFMTA's Equal Employment Opportunity office has confirmed the scoring and the proposers' commitment for meeting the respective 25 percent LBE, 16 percent DBE, and 25 percent SBE participation goals for these contracts; and

WHEREAS, SFMTA staff has successfully completed contract negotiations with Fehr & Peers and Kittelson & Associates, Inc.; and

WHEREAS, On November 16, 2015, the Civil Service Commission approved these contracts pursuant to PSC request No. 42016-15/16; and

WHEREAS, On April 26, 2016, the SFMTA, under authority delegated by the Planning Department, determined that the As-Needed Environmental and Transportation Analysis and Documentation Services contract 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); 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 #SFMTA-2016-03/1 (LOCAL) for As-Needed Environmental and Transportation Analysis and Documentation services with Fehr & Peers, for a total amount not to exceed \$2,797,767, and a term not to exceed May 20, 2018 with the option to extend for three additional one year terms at the Director of Transportation's sole discretion; and

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract #SFMTA-2016-03/2 (LOCAL) with Kittelson & Associates, Inc. for As-Needed Environmental and Transportation Analysis and Documentation services, for a total amount not to exceed \$2,797,767, and a term not to exceed May 20, 2018, with the option to extend for three additional one year terms at the Director of Transportation's sole discretion; and

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract #SFMTA-2016-11/1 (FTA) for As-Needed Environmental and Transportation Analysis and Documentation services with Fehr & Peers, for a total amount not to exceed \$1,398,884, and a term not to exceed May 20, 2018 with the option to extend for three additional one year terms at the Director of Transportation's sole discretion; and

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract #SFMTA-2016-11/2 (FTA) with Kittelson & Associates, Inc. for As-Needed Environmental and Transportation Analysis and Documentation services, for a total amount not to exceed \$1,398,884, and a term not to exceed May 20, 2018, with the option to extend for three additional one year terms at the Director of Transportation's sole discretion; and

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract #SFMTA-2016-12/1 (FHWA) for As-Needed Environmental and Transportation Analysis and Documentation services with Fehr & Peers, for a total amount not to exceed \$466,296, and a term not to exceed May 20, 2018 with the option to extend for three additional one year terms at the Director of Transportation's sole discretion; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract #SFMTA-2016-12/2 (FHWA) with Kittelson & Associates, Inc. for As-Needed Environmental and Transportation Analysis and Documentation services, for a total amount not to exceed \$466,295, and a term not to exceed May 20, 2018, with the option to extend for three additional one year terms at the Director of Transportation's sole discretion.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of May 17, 2016.

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**

**Agreement between the City and County of San Francisco
and
Fehr & Peers Associates**

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

**Agreement between the City and County of San Francisco
and
Fehr & Peers Associates
Contract No. SFMTA 2016-03/1**

This Agreement is made this _____ day of _____, 20__, in the City and County of San Francisco, State of California, by and between Fehr & Peers Associates, 332 Pine Street, 4th Floor, San Francisco, CA 94104 (“Contractor”) and City.

Recitals

- A** The SFMTA wishes to contract with a qualified firm to provide services for As Needed Environmental Analysis, Transportation Analysis, and Documentation.
The Contractor must be able to provide broad range of services to complete task orders issued by the SFMTA.
- B** The SFMTA issued a Request for Proposals (RFP) on October 14, 2015, and selected Contractor as one of two highest qualified scorer pursuant to the RFP.
- C** The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 25 %.
- D** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- E** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 42016-15/16 on November 16, 2015.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

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

1.3 Award: Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute the Contract with the selected proposer.

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

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

1.6 CMD. The Contract Monitoring Division of the City.

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

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

1.9 Contractor or Consultant: Fehr & Peers Associates

1.10 Controller: Controller of the City.

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

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

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

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

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

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

1.17 Mandatory City Requirements: Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.

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

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

1.20 Project Manager: The designated SFMTA employee who will assume all duties and responsibilities to manage the Contract.

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

1.22 Request for Proposals; RFP: The Request for Proposals for As-Needed Engineering Services issued by the SFMTA on October 14, 2015.

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

1.24 San Francisco Municipal Transportation Agency (the SFMTA or Agency): The agency of the City that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the former Department of Parking and Traffic, with exclusive authority over contracting, leasing and purchasing by the Agency.

1.25 Services: The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

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

1.27 Task Order: A written directive from the SFMTA to the Consultant to perform specified work.

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the latter of: (i) _____2016; or (ii) the Effective Date, and expire on _____, 2018, unless earlier terminated as otherwise provided herein.

2.2 The City has three options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

Article 3 Financial Matters

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

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

3.2 Guaranteed Maximum Costs. The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable

Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment Amount. Compensation under this Agreement shall be based on a negotiated lump sum price per task or subtask. In no event shall the amount of this Agreement exceed two million seven hundred ninety-seven thousand seven hundred sixty-seven dollars (\$2,797,767).

3.3.2 Method of Computing Compensation.

(a) **Hourly Rates.** The hourly rates in Appendix B shall be fixed at that level until 12 months after effective date of this Agreement. The hourly rates are "fully burdened," including all indirect/overhead costs and services such as reproduction, administrative staff assistance, etc. Hourly rates in Appendix B may be adjusted 12 months after the effective date of this Agreement. The rate increases shall not exceed 4.5 percent of the rates listed in Appendix B. No hourly rate may be increased without prior written approval of the SFMTA.

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

(c) **Out-of-Pocket Expenses.** The SFMTA will reimburse Consultant for the actual cost of approve out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses are to be pre-approved by the SFMTA and Consultant must obtain the best air fare available in a timely fashion. All travel receipts must accompany the invoice.

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

per-mile basis for travel within a 100-mile radius of the City will not be reimbursable.

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

3.4 Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the SFMTA's designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the City be liable for interest or late charges for any late payments.

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

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

3.4.3 Invoice Format. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller and must include the Contract Progress Payment Authorization number. The Consultant shall submit invoices for all allowable charges incurred in the performance of the Agreement. No invoice shall be rendered if the total work done under this Agreement since the last invoice amounts to less than \$1,500, except that an invoice may be submitted if three months have elapsed since the last invoice was submitted. No more than one invoice shall be submitted in a month. The Consultant shall submit invoices in quadruplicate with each invoice containing the following information:

- (a) Contract Number

- (b) Task Order Number
- (c) Description of the work performed or services rendered
- (d) Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced
- (e) Subconsultant costs supported by invoice itemization in the same format as described here
- (f) Total costs

3.4.4 LBE Payment. Contractor must submit all required CMD payment forms to enable CCO to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment forms. Failure to submit all required CMD payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required CMD payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a CMD Form 9 Payment Affidavit verifying its payments to LBE subcontractors.

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

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

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

3.5 Reserved (Grant-Funded Contracts)

3.6 Audit and Inspection of Records. Contractor agrees to maintain and make

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

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

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A, “Scope of Services.” Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, “Modification of this Agreement.” The Contractor shall provide high quality submittals that will require minimal revisions by SFMTA and, when applicable, be fully consistent with the City’s technical review process. Contractor shall adhere to the quality assurance guidelines set forth in Appendix D, “SFMTA Consultant Checklist for Document Submittals,” and respond fully and promptly to requests for revisions to initial submittals from the City in order to finalize documents.

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

4.3 Information and Data. The Consultant shall request in writing any information and data it will require to prepare a proposal, or perform work described in the Task Order. The Consultant shall identify the timing and priority for which this information and data will be required. The Consultant and City shall reach agreement as to the availability and delivery time for this information and data during initial task negotiations.

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

4.5 Task Requirements. The SFMTA will define Task requirements. The scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required LBE forms, and the Consultant Proposal must be incorporated into the overhead rate (as approved in Appendix B) or in the project management line item. Additionally, project management costs may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, a task monitoring system (e.g., bi-weekly project reports or monthly status updates). Consultant time spent managing or overseeing work performed by subconsultants will not be compensable.

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

4.5.2 Consultant Proposal. The Consultant shall prepare and submit a proposal for the task showing:

(a) A work plan that includes a detailed description by subtask or deliverable of the work to be performed and the means and methods that will be used to perform it;

(b) A schedule by task and deliverable, including key milestones and/or critical path deliverables;

(c) Personnel and the Subconsultants (in accordance with Appendix B) assigned to each part of the work along with a resume or curriculum vitae that indicates why such personnel are qualified to perform the work; and prior experience in performing work of this nature;

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

(i) Estimated hours and hourly rates by position including overhead and profit as listed in Appendix B for both Consultant and Subconsultant personnel. Labor hours for preparing monthly invoices or filling out required LBE forms will not be allowed. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

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

(iii) Proposed profit as follows: Total profit/mark up of each Task Order as fixed fee amount not to exceed seven percent of total amount of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Consultant, Subconsultant(s) or combination thereof.

4.5.3 Negotiation of Cost. The City will review the proposal and negotiate a lump sum price to perform the work of each task, subtask and/or deliverable and a total cost not to exceed for the task.

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

4.5.5 Record of Negotiations. The City will document the negotiations and any agreement in a Record of Negotiations.

4.5.6 Controller Certification. The City will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

4.5.7 Notice to Proceed. After certification, the City will send to the Consultant a written NTP and Task Order number. The Consultant shall use the Task Order number when submitting invoices to the City for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.

4.5.8 Changes. Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of work of the task(s). If there is a material change in the scope of work of a task, then a proposal, negotiations, and Record of Negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes

that result in an increase to the total cost of a task.

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

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

Chris Mitchell, Eric Womeldorff, Andy Kosinski, Bob Grandy, Nate Conable, Dana Weissman, Geoff Rubendall, Sarah Nadiranto, Teresa Whinery

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

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

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

4.9 Reserved (Reproduction of Work Product).

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

If Consultant considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Program Management/Implementation Plan, the Consultant shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.7 above.

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

ICF, Nelson Nygaard, LCW Consulting, Advant Consulting, MSA Design & Consulting, Walker Parking, Ramboll Environ, AECOM, Bruce Schaller Consulting, Fall Line Analytics, Ward & Associates, Panorama, Alfred Williams Consultancy, Verplanck Historic Preservation Consulting, Prevision, Geotechnical Consultants Inc.

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

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

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

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

damages, and expenses, including attorneys' fees, arising from this section.

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

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

Article 5 Insurance and Indemnity

5.1 Insurance.

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

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

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement; and

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

1. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or personal information or other personally identifying information, stored or transmitted in electronic form;
2. Network security liability arising from the unauthorized access to, use of, or tampering with, computers or computer systems, including hacker attacks; and
3. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

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

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

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

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

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

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

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

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

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

5.2 Indemnification.

For the purpose of this Agreement, Section 5.2.a will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by unlicensed service providers, and Section 5.2.b will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by licensed design professionals or a combination of licensed design professionals and unlicensed service providers.

(a) Unlicensed Service Providers. For any claim or action arising from Services performed by Contractor or any subconsultant for which the relevant Task Order and California law does not require the person performing the Services hold a professional license, Contractor shall indemnify and defend the City as provided in this Section 5.2.a.

The Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise

unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

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

(b) Licensed Design Professionals. For any claim or action arising from Services performed by Contractor or any subconsultant for which the relevant Task Order and California law requires the person performing the Services hold a professional license (including but not limited to work that must be performed by a licensed professional engineer, architect, or traffic engineer), Contractor shall indemnify and defend the City as provided in this Section 5.2.b.

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

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT

SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

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

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

Article 7 Payment of Taxes

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

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

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

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

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.2 Termination for Default; Remedies.

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

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

3.7	Submitting False Claims.
4.13	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.4	Nondisclosure of Private, Proprietary or Confidential Information
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws

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

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

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

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

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

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

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

8.4 Rights and Duties upon Termination or Expiration.

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

3.4.1	Payment Limited to Satisfactory Services
3.6	Audit and Inspection of Records
3.7	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City

6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
10.4	Nondisclosure of Private, Proprietary or Confidential Information
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability

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

Article 9 Rights In Deliverables

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

9.2 Works for Hire. If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the

United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at www.sfgov.org under "Government."

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

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

10.4 Nondisclosure of Private, Proprietary or Confidential Information.

10.4.1 If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M. For purposes of this Agreement, Private Information shall also include vehicle license plate information and other information that would allow individuals recorded in Contractor created videos to be identified.

10.4.2 In the performance of Services, Contractor may have access to City's

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

10.4.3 Notwithstanding any provision in this Agreement, Contractor shall not deliver to City in any form or medium, nor shall it incorporate into any information, data, document, or work product to be delivered to City, any Private Information that Contractor may collect or use in performing the Services, or that may otherwise be in Contractor's possession or control, and none of such Private Information shall be a work for hire or belong to City.

10.5 Nondiscrimination Requirements

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

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

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 25% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

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

12P.

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

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

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

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

10.12 Reserved. (Slavery Era Disclosure).

10.13 Reserved. (Working with Minors).

10.14 Consideration of Criminal History in Hiring and Employment Decisions

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

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

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

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

10.17 Reserved. (Sugar-Sweetened Beverage Prohibition).

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

10.19 Reserved. (Preservative Treated Wood Products).

Article 11 General Provisions

11.1 Notices to the Parties. Unless otherwise indicated in this Agreement, all written

communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Amber Vasché
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103
E-mail: amber.vasche@sfmta.com

To Contractor: Eric Womeldorff, Senior Associate
Fehr & Peers
332 Pine Street, 4th Floor
San Francisco, California 94104
Email: e.womeldorff@fehrandpeers.com

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

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

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

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

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

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of

services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

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

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

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or

impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated October 23, 2015. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 MacBride Principles And Signature

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

Article 13 Large Vehicle Driver Safety Training Requirements

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

13.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or

subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

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

CITY	CONTRACTOR
<p>San Francisco Municipal Transportation Agency</p> <p>_____</p> <p>Edward D. Reiskin Director of Transportation</p> <p>San Francisco Municipal Transportation Agency Board of Directors Resolution No. _____ Adopted: _____ Attest:</p> <p>_____</p> <p>Secretary, SFMTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Rob Stone Deputy City Attorney</p>	<p>Fehr & Peers Associates</p> <p>_____</p> <p>Eric Womeldorff, Senior Associate</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 59841</p>

Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Form
- D: Consultant Checklist for Document Submittals

Appendix A Scope of Services

Description of Services

Consultant agrees to perform the following Services pursuant to the terms and conditions of this agreement between Fehr and Peers and the SFMTA, exercising the same degree of care, skill, and diligence as is ordinarily possessed and exercised by professionals providing similar services, currently practicing, under similar circumstances.

From time-to-time, it could be necessary for the consultant staff to perform the work on-site at the SFMTA offices to perform day-to-day services (e.g., CAD work). In advance of this work occurring, SFMTA and Fehr and Peers will agree on the parameters of this work arrangement.

A. Environmental Analysis and Documentation Services (CEQA and NEPA)

The Consultant(s) shall be responsible for preparing CEQA and/or NEPA analysis in partnership with SFMTA environmental review staff and project managers and in consultation, or under the direction of, the Planning Department. The tasks shall include but not be limited to the following:

1. Initial consultation for determining the level of environmental review that would be required and overall environmental review approach.
2. Provide environmental review and analysis of proposed SFMTA projects and policies; prepare documents for compliance with CEQA, including, but not limited to, Exemptions, Initial Studies / Environmental Evaluation Checklist, Negative Declaration / Mitigated Negative Declaration, Draft and Final Environmental Impact Reports (EIR), Addendums, Supplemental and Subsequent EIRs, Mater EIRs and any other CEQA documents or portions thereof including the technical studies to support such documents.
3. Preparation of NEPA documents, such as but not limited to Categorical Exclusion memos/forms, Initial Studies, Environmental Assessments, Findings of No Significant Impacts, addenda or portions of aforementioned documents as well as documents necessary for Section 106 and 4(f) compliance and any other documents to support NEPA documentation.
4. Preparation or review of specialized studies in the following areas:
 - a. Architectural History / Cultural Landscapes/ Historic Architectural;
 - b. Archaeological;
 - c. Biological;
 - d. Geological;
 - e. Hazardous materials;
 - f. Energy & Greenhouse Gas (GHG) emissions;

- g. Water Quality;
 - h. Noise and vibration;
 - i. Aesthetics and Visual impacts;
 - j. Wind impacts;
 - k. Air Quality;
 - l. Transportation analyses for environmental review, including but not limited to preparing Transportation Impact Studies, Synchro analysis of traffic level of service impacts from transportation projects, Vehicle Miles Traveled analysis, safety analysis, traffic device warrants, parking occupancy and utilization analysis, assessment of project impacts on transit, pedestrian and bicycle travel, loading impacts, emergency vehicle access impacts and assessments of cumulative/future traffic impacts. Analyses will be consistent with SFMTA guidance and the SF Planning Department's Transportation Impact Analysis Guidelines for Environmental Review under the direction of the SF Planning Department;
 - m. Title VI and environmental justice;
 - n. Socioeconomics;
 - o. Conduct analysis to support sea level rise vulnerability assessment; and
 - p. Mitigation Monitoring and Reporting Programs.
5. Conducting or assisting with scoping sessions and other agency and public outreach meetings.
 6. Preparing analyses or memos on environmental strategy and procedures (e.g, best practices or typical practices regarding environmental review for SFMTA projects and programs).
 7. Coordination of comments and preparation of responses from CEQA responsible agencies, along with other public and private stakeholder on draft and final SFMTA environmental documents.
 8. Implementing and reporting on mitigation monitoring programs.
 9. Review of proposed changes to CEQA and/or NEPA and drafting comment memos in response to those changes.
 10. Other related tasks as may be necessary to complete CEQA and NEPA review, including but not limited to review of documents prepared by the Planning Department and/or other Lead Agencies.

B. Transportation Analysis and Engineering Services

The Consultant(s) shall be responsible for preparing transportation analysis and engineering services. The tasks shall include but not be limited to the following:

1. Propose and evaluate physical design improvements for complete streets projects, Parking related projects, and Parking and intermodal facilities such as transit hubs.

2. Recommend designs to improve traffic circulation patterns to reduce conflicts between transportation modes, including signalization, roadway design, and traffic.
3. Recommend and/or assess bicycle and pedestrian project designs in support of Vision Zero and Bicycle Strategy projects.
4. Drafting various design standards based on industry best practices.
5. Perform arterial, freeway, and other operational analysis using Highway Capacity Manual and related methodologies and software programs.
6. Conduct micro-simulation (e.g., Vissim) to review potential changes to the network, including but not limited to signals, signal progression, transit signal priority treatments, etc.
7. Conduct feasibility-level engineering studies.
8. Develop materials to convey transportation engineering analysis and recommendations to the general public through various written and visual media including but not limited to justifications, 3D renderings, maps and charts.
9. Perform intersection and roadway safety analysis using Highway Safety Manual and related methodologies.
10. Develop and perform project screening and prioritization.
11. Transportation Equity Analysis

C. Transportation Data Collection and Analytics

The Consultant(s) selected shall be responsible for data collection, analytics and presentation of findings. The tasks shall include but not be limited to the following:

1. Pedestrian, bicycle, and vehicle circulation and parking utilization surveys, turning movement and directional counts of multiple modes (including but not limited to speed surveys, tube counts, vehicle classification, video counts, manual counts, etc.). Counts may need to be coordinated across the city and include numerous locations. Data collection information will be in the format specified by the SFMTA, but must include, and is not limited to, the following information:
 - a. Date / Times;
 - b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
 - c. Name and contact information of consultant performing the count effort;
 - d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e. 30TH ST EB EAST OF GUERRERO)
 - ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e. LAGUNA CLAY PM);

- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
 - f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
 - g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.
2. Development, application, and analysis of surveys and market research of people using specific modes of travel to understand demographics, origins and destinations, trip making patterns, and other factors influencing travel mode choice. This could include intercept type surveys and license plate collection surveys.
 3. Research and analysis of transportation policies, including existing City and SFMTA-specific policies, and global and US/North American best practices. Outcomes to include recommendations for strategic policies.
 4. Conduct analysis of existing agency data and data from external vendors to identify and analyze travel markets, parking utilization and pricing, transit ridership, congestion metrics as well as other performance metrics.
 5. Conduct Cost/Benefit analysis for transportation related projects, including federal TIGER grant applications and conduct value capture analysis of benefits of major transit investments adjacent to new development.
 6. Provide support with development of grant proposals. Lead and/or support the development and implementation of revenue models and analysis for citywide variable-rate pricing related to parking; conduct nexus studies for rates and fees.
 7. Applying range of geospatial analysis techniques to available or developed geospatial data sets. Lead and/or support the development of geospatial data that depicts the transportation system or other relevant data.
 8. Conduct before and after studies for project implementation. This could include using tools such as Synchro or Vissim to measure modal performance.
 9. Synthesize data collected and results of analysis into well written and easily understood memorandums and/or reports, including providing well designed graphics that convey technical information.
 10. Support development of area-specific (e.g., neighborhood) parking management plans.
 11. Develop travel demand forecasting and volume projections for all modes.
 12. Develop web-based data collection/presentation tools.

Department Liaison

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

**Appendix B
Calculations of Charges**

Billing Rates

SFMTA On-Call: Cost Plus Fixed Fee Rates

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
<i>Fehr & Peers</i>			10%
Principal II-IV	\$85.00	176.00%	\$258.06
Principal I	\$75.00	176.00%	\$227.70
Senior Associate II	\$70.00	176.00%	\$212.52
Senior Associate I	\$63.00	176.00%	\$191.27
Associate II	\$56.00	176.00%	\$170.02
Associate I	\$52.00	176.00%	\$157.87
Senior Engineer/Planner III	\$48.00	176.00%	\$145.73
Senior Engineer/Planner II	\$45.00	176.00%	\$136.62
Senior Engineer/Planner I	\$42.00	176.00%	\$127.51
Engineer/Planner III	\$39.00	176.00%	\$118.40
Engineer/Planner II	\$36.00	176.00%	\$109.30
Engineer/Planner I	\$33.00	176.00%	\$100.19
Senior Engineering Technician V	\$46.00	176.00%	\$139.66
Senior Engineering Technician IV	\$42.00	176.00%	\$127.51
Senior Engineering Technician III	\$38.00	176.00%	\$115.37
Senior Engineering Technician II	\$36.00	176.00%	\$109.30
Senior Engineering Technician I	\$34.00	176.00%	\$103.22
Technician III	\$33.00	176.00%	\$100.19
Technician II	\$30.00	176.00%	\$91.08
Technician I	\$28.00	176.00%	\$85.01
Senior Administrative Assistant IV	\$37.00	176.00%	\$112.33
Senior Administrative Assistant III	\$36.00	176.00%	\$109.30
Senior Administrative Assistant II	\$34.00	176.00%	\$103.22
Senior Administrative Assistant I	\$32.00	176.00%	\$97.15
Administrative Assistant III	\$30.00	176.00%	\$91.08
Administrative Assistant II	\$28.00	176.00%	\$85.01
Administrative Assistant I	\$26.00	176.00%	\$78.94
Intern	\$28.00	176.00%	\$85.01
<i>ICF</i>			
Senior Project Director	\$127.37	164.32%	\$290.00
Project Director	\$88.27	164.32%	\$256.65

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Technical Director	\$80.85	164.32%	\$235.07
Senior Technical Analyst	\$77.33	164.32%	\$224.84
Managing Consultant	\$71.50	164.32%	\$207.89
Senior Consultant III	\$66.50	164.32%	\$193.35
Senior Consultant II	\$57.48	164.32%	\$167.12
Senior Consultant I	\$52.50	164.32%	\$152.64
Associate Consultant III	\$49.75	164.32%	\$144.65
Associate Consultant II	\$44.90	164.32%	\$130.55
Associate Consultant I	\$39.43	164.32%	\$114.64
Associate Consultant	\$35.97	164.32%	\$104.58
Administrative Technician	\$24.25	164.32%	\$70.51
Technician	\$23.00	164.32%	\$66.87
Intern	\$18.00	164.32%	\$52.34
<i>Nelson-Nygaard</i>			
Principal IX	\$105.79	175.00%	\$320.00
Principal VIII	\$99.17	175.00%	\$300.00
Principal VII	\$89.26	175.00%	\$270.00
Principal VI	\$82.64	175.00%	\$250.00
Principal V	\$74.38	175.00%	\$225.00
Principal IV	\$69.42	175.00%	\$210.00
Principal III	\$64.46	175.00%	\$195.00
Principal II	\$59.50	175.00%	\$180.00
Principal II	\$56.20	175.00%	\$170.00
Senior Associate II	\$51.24	175.00%	\$155.00
Senior Associate I	\$47.93	175.00%	\$145.00
Associate IV	\$42.98	175.00%	\$130.00
Associate III	\$36.36	175.00%	\$110.00
Associate II	\$31.40	175.00%	\$95.00
Associate I	\$26.45	175.00%	\$80.00
Intern	\$19.83	175.00%	\$60.00
GIS, Communications	\$49.59	175.00%	\$150.00
Creative Services	\$42.98	175.00%	\$130.00
Project Accountant	\$36.36	175.00%	\$110.00
OpTteam/Communications Staff	\$36.36	175.00%	\$110.00
<i>LCW (LBE)</i>			

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Luba Wyznyckyj	\$210	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$210
<i>Adavant (LBE)</i>			
Jose Farran	\$210	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$210
<i>MSA (LBE)</i>			
Principal	\$67.26	103.00%	\$150.19
Project Manager	\$44.83	103.00%	\$100.11
<i>Walker Parking</i>			
Senior Principal	\$142.60	104.00%	\$320.00
Principal	\$115.86	104.00%	\$260.00
Senior Project Manager	\$106.95	104.00%	\$240.00
Project Manager	\$86.90	104.00%	\$195.00
Assistant Project Manager	\$73.53	104.00%	\$165.00
Senior Parking Consultant	\$106.95	104.00%	\$240.00
Parking Consultant	\$86.90	104.00%	\$195.00
Parking Analyst/Planner	\$73.53	104.00%	\$165.00
Senior Admin Assistant	\$42.34	104.00%	\$95.00
Administrative Assistant	\$35.65	104.00%	\$80.00
<i>Environ</i>			
Principal 11	\$81.73	173.45%	\$245.84
Principal Consultant 10A	\$74.39	173.45%	\$223.76
Manager 10	\$63.73	173.45%	\$191.70
Manager 9	\$52.54	173.45%	\$158.04
Manager 8	\$46.63	173.45%	\$140.26

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Associate 7	\$43.13	173.45%	\$129.73
Associate 6B	\$40.34	173.45%	\$121.34
Associate 6	\$36.57	173.45%	\$110.00
Associate 5	\$33.57	173.45%	\$100.98
Associate 4	\$29.47	173.45%	\$88.64
Associate 3	\$24.50	173.45%	\$73.69
Draftsperson	\$37.27	173.45%	\$112.11
Support	\$33.09	173.45%	\$99.53
<i>AECOM</i>			
Principal / Contract Manager	\$94.92	149.00%	\$260.00
Project Manager	\$82.12	149.00%	\$225.00
Senior Engineer	\$79.44	149.00%	\$218.00
Project Engineer	\$64.92	149.00%	\$178.00
Staff Engineer	\$57.64	149.00%	\$158.00
CADD Operator/Drafter	\$43.81	149.00%	\$120.00
Project Assistant	\$31.03	149.00%	\$85.00
<i>Bruce Schaller</i>			
Bruce Schaller	\$275	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$275
<i>Fall Line Analytics (LBE)</i>			
David Latterman	\$200	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$200
<i>Ward & Associates (LBE)</i>			
Principal	\$70.00	145.00%	\$188.65
Senior Planner	\$55.00	145.00%	\$148.23

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Planner	\$45.00	145.00%	\$121.28
Research Associate	\$36.00	145.00%	\$97.02
<i>Panorama (LBE)</i>			
Principal	\$77	178.00%	\$235.47
Senior Manager	\$67	178.00%	\$205.83
Senior Project Manager/Scientist IV	\$65	178.00%	\$199.93
Project Manager/Scientist III	\$50	178.00%	\$154.37
Environmental Scientist II/Staff III	\$36	178.00%	\$110.27
Environmental Scientist I	\$31	178.00%	\$95.56
GIS Specialist	\$41	178.00%	\$124.98
Graphic Specialist	\$41	178.00%	\$125.38
Senior Biologist	\$50	178.00%	\$152.90
<i>Alfred Williams (LBE)</i>			
Principal	\$98.47	120.00%	\$238.30
Project Manager	\$77.73	120.00%	\$188.11
<i>Verplanck (LBE)</i>			
Chris VerPlanck	\$135	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$135
<i>Prevision (LBE)</i>			
Adam Phillips	\$175	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$175
<i>GTC (LBE)</i>			

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Neel Neelakantan	\$220	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$220
Aurie Patterson	\$165	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$165
James Thurber	\$200	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$200

**Appendix C
Task Order Request Form**

San Francisco Municipal Transportation Agency

SFMTA-2016-03 (LOCAL)

Consultant Name: _____

TASK ORDER DESCRIPTION

Type of Request: <input type="checkbox"/> New Task Order- No. _____ PSC Balance as of this request: _____ <input type="checkbox"/> Modification - No. _____	Date Initiated: _____
LBE Goal (%): _____ (attach CCO approval memo) Total Budget Amount: \$ _____	
Index Code: _____ Amount: \$ _____	
Index Code: _____ Amount: \$ _____	
[Insert additional lines for budget and index codes as required]	
TASK TITLE	
BRIEF SUMMARY OF WORK TO BE PERFORMED	
SCHEDULE	
Start Date: _____ Estimated Completion Date: _____	
APPROVALS	
Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section]	
Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section]	
Approved _____ Date: _____ Tom Maguire Director of Sustainable Streets	

Appendix D
Consultant Checklist for Document Submittals

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)

Task Order Number: _____

Task Order Title: _____

This checklist must be filled in by the consultant and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

1. Document is edited for grammatical and typographical errors, clarity, and format.
2. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
3. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
4. All document sections, tables, figures, appendices, etc. are submitted.
5. Footnotes are on same page as the reference (no endnotes).
6. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
7. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
8. Data in tables and figures are cross-checked with text.
9. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
10. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
11. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
12. All document background reports are finalized and included with the submittal packet.
13. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Consultant at the Task Order level:
 - a. Date / Times;
 - b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
 - c. Name and contact information of consultant performing the count effort;
 - d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)

- ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e., LAGUNA CLAY PM);
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
- f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
- g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

Notes:

Firm Name: _____

Consultant Name: _____

Consultant Signature: _____

Date: _____

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

**Agreement between the City and County of San Francisco
and
Fehr & Peers Associates**

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

**Agreement between the City and County of San Francisco
and
Fehr & Peers Associates
Contract No. SFMTA 2016-11/1**

This Agreement is made this _____ day of _____, 20___, in the City and County of San Francisco, State of California, by and between Fehr & Peers Associates, 332 Pine Street, 4th Floor, San Francisco, CA 94104 (“Contractor”) and City.

Recitals

- A** The SFMTA wishes to contract with a qualified firm to provide services for As Needed Environmental Analysis, Transportation Analysis, and Documentation.

The Contractor must be able to provide broad range of services to complete task orders issued by the SFMTA.
- B** The SFMTA issued a Request for Proposals (RFP) on December 2, 2015, and selected Contractor as one of two highest qualified scorer pursuant to the RFP.
- C** The Small Business Enterprise (SBE) subcontracting participation requirement for this Agreement is 25%.
- D** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- E** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 42016-15/16 on November 16, 2015.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

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

1.3 Award: Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute the Contract with the selected proposer.

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

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

1.6 CMD. The Contract Monitoring Division of the City.

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

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

1.9 Contractor or Consultant: Fehr & Peers Associates

1.10 Controller: Controller of the City.

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

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

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

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

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

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

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

1.18 Mandatory City Requirements: Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.

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

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

1.21 Project Manager: The designated SFMTA employee who will assume all duties and responsibilities to manage the Contract.

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

1.23 Request for Proposals; RFP: The Request for Proposals for As-Needed Engineering Services issued by the SFMTA on December 2, 2015.

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

1.25 San Francisco Municipal Transportation Agency (the SFMTA or Agency): The agency of the City that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the former Department of Parking and Traffic, with exclusive authority over contracting, leasing and purchasing by the Agency.

1.26 Services: The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

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

1.28 Task Order: A written directive from the SFMTA to the Consultant to perform specified work.

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the latter of: (i) _____ 2016; or (ii) the Effective Date, and expire on _____, 2018, unless earlier terminated as otherwise provided herein.

2.2 The City has three options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

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

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

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

3.3 Compensation.

3.3.1 Payment Amount. Compensation under this Agreement shall be based on a negotiated lump sum price per task or subtask. In no event shall the amount of this Agreement exceed one million three hundred ninety-eight thousand eight hundred eighty-four dollars (\$1,398,884).

3.3.2 Method of Computing Compensation.

(a) **Hourly Rates.** The hourly rates in Appendix B shall be fixed at that level until 12 months after effective date of this Agreement. The hourly rates are "fully burdened," including all indirect/overhead costs and services such as reproduction, administrative staff assistance, etc. Hourly rates in Appendix B may be adjusted 12 months after the effective date of this Agreement. The rate increases shall not exceed 4.5 percent of the rates listed in Appendix B. No hourly rate may be increased without prior written approval of the SFMTA.

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

(c) **Out-of-Pocket Expenses.** The SFMTA will reimburse Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses are to be pre-approved by the SFMTA and Consultant must obtain the best air fare available in a timely fashion. All travel receipts must accompany the invoice.

(d) **Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant

personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for the services of this Agreement. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable.

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

3.4 Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the SFMTA's designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the City be liable for interest or late charges for any late payments.

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

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

3.4.3 Invoice Format. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller and must include the Contract Progress Payment Authorization number. The Consultant shall submit invoices for all allowable charges incurred in the performance of the Agreement. No invoice shall be rendered if the total work done under this Agreement since the last invoice amounts to less than \$1,500, except that an invoice may be

submitted if three months have elapsed since the last invoice was submitted. No more than one invoice shall be submitted in a month. The Consultant shall submit invoices in quadruplicate with each invoice containing the following information:

- (a) Contract Number
- (b) Task Order Number
- (c) Description of the work performed or services rendered
- (d) Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced
- (e) Subconsultant costs supported by invoice itemization in the same format as described here
- (f) Total costs

3.4.4 SBE Payment. Contractor must submit all required payment forms to enable CCO to monitor Contractor's compliance with the SBE subcontracting commitments in this Agreement. Contractor shall pay its SBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the SBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required payment forms. Failure to submit all required payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a required forms to verify its payments to SBE subcontractors.

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

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

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

3.5 Grant-Funded Contracts

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

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

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

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

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A, “Scope of Services.” Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, “Modification of this Agreement.” The Contractor shall provide high quality submittals that will require minimal revisions by SFMTA and, when applicable, be fully consistent with the City’s technical review process. Contractor shall adhere to the quality assurance guidelines set forth in Appendix D, “SFMTA Consultant Checklist for Document Submittals,” and respond fully and promptly to requests for revisions to initial submittals from the City in order to finalize documents.

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

4.3 Information and Data. The Consultant shall request in writing any information and data it will require to prepare a proposal, or perform work described in the Task Order. The Consultant shall identify the timing and priority for which this information and data will be required. The Consultant and City shall reach agreement as to the availability and delivery time for this information and data during initial task negotiations.

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

4.5 Task Requirements. The SFMTA will define Task requirements. The scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required LBE forms, and the Consultant Proposal must be incorporated into the overhead rate (as approved in Appendix B) or in the project management line item. Additionally, project management costs may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, a task monitoring system (e.g., bi-weekly project reports or monthly status updates). Consultant time spent managing or overseeing work performed by

subconsultants will not be compensable.

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

4.5.2 Consultant Proposal. The Consultant shall prepare and submit a proposal for the task showing:

(a) A work plan that includes a detailed description by subtask or deliverable of the work to be performed and the means and methods that will be used to perform it;

(b) A schedule by task and deliverable, including key milestones and/or critical path deliverables;

(c) Personnel and the Subconsultants (in accordance with Appendix B) assigned to each part of the work along with a resume or curriculum vitae that indicates why such personnel are qualified to perform the work; and prior experience in performing work of this nature;

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

(i) Estimated hours and hourly rates by position including overhead and profit as listed in Appendix B for both Consultant and Subconsultant personnel. Labor hours for preparing monthly invoices or filling out required LBE forms will not be allowed. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

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

(iii) Proposed profit as follows: Total profit/mark up of each Task Order as fixed fee amount not to exceed seven percent of total amount of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Consultant, Subconsultant(s) or combination thereof.

4.5.3 Negotiation of Cost. The City will review the proposal and negotiate a lump sum price to perform the work of each task, subtask and/or deliverable and a total cost not to exceed for the task.

4.5.4 Subcontracting Goals. The CCO will review the final negotiated Task Order scope and schedule to determine the LBE goal and issue a memo to file by CMD. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the

overall goal set forth in the Agreement.

4.5.5 Record of Negotiations. The City will document the negotiations and any agreement in a Record of Negotiations.

4.5.6 Controller Certification. The City will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

4.5.7 Notice to Proceed. After certification, the City will send to the Consultant a written NTP and Task Order number. The Consultant shall use the Task Order number when submitting invoices to the City for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.

4.5.8 Changes. Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of work of the task(s). If there is a material change in the scope of work of a task, then a proposal, negotiations, and Record of Negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

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

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

Chris Mitchell, Eric Womeldorff, Andy Kosinski, Bob Grandy, Nate Conable, Dana Weissman, Geoff Rubendall, Sarah Nadiranto, Teresa Whinery

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

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

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

4.9 Reserved (Reproduction of Work Product).

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

If Consultant considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Program Management/Implementation Plan, the Consultant shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.7 above.

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

below:

ICF, Nelson Nygaard, LCW Consulting, Adavant Consulting, MSA Design & Consulting, Walker Parking, Ramboll Environ, AECOM, Bruce Schaller Consulting, Fall Line Analytics, Ward & Associates, Panorama, Alfred Williams Consultancy, Verplanck Historic Preservation Consulting, Prevision, Geotechnical Consultants Inc.

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

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

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

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

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

Article 5 Insurance and Indemnity

5.1 Insurance.

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

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

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations;

and

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

(d) Professional liability insurance, applicable to Contractor’s profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement; and

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

1. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or personal information or other personally identifying information, stored or transmitted in electronic form;
2. Network security liability arising from the unauthorized access to, use of, or tampering with, computers or computer systems, including hacker attacks; and
3. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City’s or third person’s computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

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

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

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

5.1.3 All policies shall be endorsed to provide 30 days’ advance written notice

to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled “Notices to the Parties.” All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

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

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

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

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

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

5.2 Indemnification.

For the purpose of this Agreement, Section 5.2.a will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by unlicensed service providers, and Section 5.2.b will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by licensed design professionals or a combination of licensed design professionals and unlicensed service providers.

(a) Unlicensed Service Providers. For any claim or action arising from Services performed by Contractor or any subconsultant for which the relevant Task Order and

California law does not require the person performing the Services hold a professional license, Contractor shall indemnify and defend the City as provided in this Section 5.2.a.

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

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

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

(b) Licensed Design Professionals. For any claim or action arising from Services performed by Contractor or any subconsultant for which the relevant Task Order and California law requires the person performing the Services hold a professional license (including but not limited to work that must be performed by a licensed professional engineer, architect, or traffic engineer), Contractor shall indemnify and defend the City as provided in this Section 5.2.b.

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

Article 6 Liability of the Parties

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

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

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

Article 7 Payment of Taxes

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

7.2 Contractor acknowledges that this Agreement may create a "possessory interest"

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

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

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

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

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

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

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

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

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

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

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

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

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

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

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

8.1.4 In no event shall SFMTA be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but

are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

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

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

8.2 Termination for Default; Remedies.

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

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

3.7	Submitting False Claims.
4.13	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.4	Nondisclosure of Private, Proprietary or Confidential Information
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws

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

(c) Contractor (i) is generally not paying its debts as they become due; (iv) 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; (v) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

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

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

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

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

8.3 Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such

default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

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

3.4.1	Payment Limited to Satisfactory Services
3.5.1	Grant Funded Contracts - Disallowed
3.6	Audit and Inspection of Records
3.7	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
10.4	Nondisclosure of Private, Proprietary or Confidential Information
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability

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

City.

Article 9 Rights In Deliverables

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

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

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at www.sfgov.org under "Government."

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

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

prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Nondisclosure of Private, Proprietary or Confidential Information.

10.4.1 If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M. For purposes of this Agreement, Private Information shall also include vehicle license plate information and other information that would allow individuals recorded in Contractor created videos to be identified.

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

10.4.3 Notwithstanding any provision in this Agreement, Contractor shall not deliver to City in any form or medium, nor shall it incorporate into any information, data, document, or work product to be delivered to City, any Private Information that Contractor may collect or use in performing the Services, or that may otherwise be in Contractor's possession or control, and none of such Private Information shall be a work for hire or belong to City.

10.5 Nondiscrimination Requirements

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

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

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

10.6 Small Business Enterprise Program.

10.6.1 General. The SFMTA is committed to a Small Business Enterprise Program (SBE Program) for the participation of SBEs in contracting opportunities. In addition, the Consultant must comply with all applicable federal regulations regarding SBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement. More information on federal SBE requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

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

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

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

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

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

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor

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

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

10.12 Reserved. (Slavery Era Disclosure).

10.13 Reserved. (Working with Minors).

10.14 Consideration of Criminal History in Hiring and Employment Decisions

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the

applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

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

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

10.17 Reserved. (Sugar-Sweetened Beverage Prohibition).

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

10.19 Reserved. (Preservative Treated Wood Products).

Article 11 General Provisions

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

To City: Amber Vasché
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103
E-mail: amber.vasche@sfmta.com

To Contractor: Eric Womeldorff, Senior Associate
Fehr & Peers
332 Pine Street, 4th Floor
San Francisco, California 94104
Email: e.womeldorff@fehrandpeers.com

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

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

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

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

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

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

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

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

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated November 16, 2015. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms

or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 MacBride Principles And Signature

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

Article 13 Large Vehicle Driver Safety Training Requirements

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

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

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

CITY	CONTRACTOR
San Francisco Municipal Transportation Agency	Fehr & Peers Associates
_____ Edward D. Reiskin Director of Transportation	_____ Eric Womeldorff, Senior Associate
San Francisco Municipal Transportation Agency Board of Directors Resolution No. _____ Adopted: _____ Attest:	<u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u>
_____ Secretary, SFMTA Board of Directors	By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.
Approved as to Form: Dennis J. Herrera City Attorney	City vendor number: 59841
By: _____ Rob Stone Deputy City Attorney	

Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Form
- D: Consultant Checklist for Document Submittals
- E: FTA Requirements for Personal Services Contracts
- F: SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY SBE REQUIREMENTS

Appendix A Scope of Services

Description of Services

Consultant agrees to perform the following Services pursuant to the terms and conditions of this agreement between Fehr and Peers and the SFMTA, exercising the same degree of care, skill, and diligence as is ordinarily possessed and exercised by professionals providing similar services, currently practicing, under similar circumstances.

From time-to-time, it could be necessary for the consultant staff to perform the work on-site at the SFMTA offices to perform day-to-day services (e.g., CAD work). In advance of this work occurring, SFMTA and Fehr and Peers will agree on the parameters of this work arrangement.

D. Environmental Analysis and Documentation Services (CEQA and NEPA)

The Consultant(s) shall be responsible for preparing CEQA and/or NEPA analysis in partnership with SFMTA environmental review staff and project managers and in consultation, or under the direction of, the Planning Department. The tasks shall include but not be limited to the following:

11. Initial consultation for determining the level of environmental review that would be required and overall environmental review approach.
12. Provide environmental review and analysis of proposed SFMTA projects and policies; prepare documents for compliance with CEQA, including, but not limited to, Exemptions, Initial Studies / Environmental Evaluation Checklist, Negative Declaration / Mitigated Negative Declaration, Draft and Final Environmental Impact Reports (EIR), Addendums, Supplemental and Subsequent EIRs, Mater EIRs and any other CEQA documents or portions thereof including the technical studies to support such documents.
13. Preparation of NEPA documents, such as but not limited to Categorical Exclusion memos/forms, Initial Studies, Environmental Assessments, Findings of No Significant Impacts, addenda or portions of aforementioned documents as well as documents necessary for Section 106 and 4(f) compliance and any other documents to support NEPA documentation.
14. Preparation or review of specialized studies in the following areas:
 - a. Architectural History / Cultural Landscapes/ Historic Architectural;
 - b. Archaeological;
 - c. Biological;
 - d. Geological;
 - e. Hazardous materials;
 - f. Energy & Greenhouse Gas (GHG) emissions;

- g. Water Quality;
 - h. Noise and vibration;
 - i. Aesthetics and Visual impacts;
 - j. Wind impacts;
 - k. Air Quality;
 - l. Transportation analyses for environmental review, including but not limited to preparing Transportation Impact Studies, Synchro analysis of traffic level of service impacts from transportation projects, Vehicle Miles Traveled analysis, safety analysis, traffic device warrants, parking occupancy and utilization analysis, assessment of project impacts on transit, pedestrian and bicycle travel, loading impacts, emergency vehicle access impacts and assessments of cumulative/future traffic impacts. Analyses will be consistent with SFMTA guidance and the SF Planning Department's Transportation Impact Analysis Guidelines for Environmental Review under the direction of the SF Planning Department;
 - m. Title VI and environmental justice;
 - n. Socioeconomics;
 - o. Conduct analysis to support sea level rise vulnerability assessment; and
 - p. Mitigation Monitoring and Reporting Programs.
15. Conducting or assisting with scoping sessions and other agency and public outreach meetings.
 16. Preparing analyses or memos on environmental strategy and procedures (e.g, best practices or typical practices regarding environmental review for SFMTA projects and programs).
 17. Coordination of comments and preparation of responses from CEQA responsible agencies, along with other public and private stakeholder on draft and final SFMTA environmental documents.
 18. Implementing and reporting on mitigation monitoring programs.
 19. Review of proposed changes to CEQA and/or NEPA and drafting comment memos in response to those changes.
 20. Other related tasks as may be necessary to complete CEQA and NEPA review, including but not limited to review of documents prepared by the Planning Department and/or other Lead Agencies.

E. Transportation Analysis and Engineering Services

The Consultant(s) shall be responsible for preparing transportation analysis and engineering services. The tasks shall include but not be limited to the following:

12. Propose and evaluate physical design improvements for complete streets projects, Parking related projects, and Parking and intermodal facilities such as transit hubs.

13. Recommend designs to improve traffic circulation patterns to reduce conflicts between transportation modes, including signalization, roadway design, and traffic.
14. Recommend and/or assess bicycle and pedestrian project designs in support of Vision Zero and Bicycle Strategy projects.
15. Drafting various design standards based on industry best practices.
16. Perform arterial, freeway, and other operational analysis using Highway Capacity Manual and related methodologies and software programs.
17. Conduct micro-simulation (e.g., Vissim) to review potential changes to the network, including but not limited to signals, signal progression, transit signal priority treatments, etc.
18. Conduct feasibility-level engineering studies.
19. Develop materials to convey transportation engineering analysis and recommendations to the general public through various written and visual media including but not limited to justifications, 3D renderings, maps and charts.
20. Perform intersection and roadway safety analysis using Highway Safety Manual and related methodologies.
21. Develop and perform project screening and prioritization.
22. Transportation Equity Analysis

F. Transportation Data Collection and Analytics

The Consultant(s) selected shall be responsible for data collection, analytics and presentation of findings. The tasks shall include but not be limited to the following:

13. Pedestrian, bicycle, and vehicle circulation and parking utilization surveys, turning movement and directional counts of multiple modes (including but not limited to speed surveys, tube counts, vehicle classification, video counts, manual counts, etc.). Counts may need to be coordinated across the city and include numerous locations. Data collection information will be in the format specified by the SFMTA, but must include, and is not limited to, the following information:
 - a. Date / Times;
 - b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
 - c. Name and contact information of consultant performing the count effort;
 - d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e. 30TH ST EB EAST OF GUERRERO)
 - ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e. LAGUNA CLAY PM);

- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
 - f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
 - g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.
14. Development, application, and analysis of surveys and market research of people using specific modes of travel to understand demographics, origins and destinations, trip making patterns, and other factors influencing travel mode choice. This could include intercept type surveys and license plate collection surveys.
 15. Research and analysis of transportation policies, including existing City and SFMTA-specific policies, and global and US/North American best practices. Outcomes to include recommendations for strategic policies.
 16. Conduct analysis of existing agency data and data from external vendors to identify and analyze travel markets, parking utilization and pricing, transit ridership, congestion metrics as well as other performance metrics.
 17. Conduct Cost/Benefit analysis for transportation related projects, including federal TIGER grant applications and conduct value capture analysis of benefits of major transit investments adjacent to new development.
 18. Provide support with development of grant proposals. Lead and/or support the development and implementation of revenue models and analysis for citywide variable-rate pricing related to parking; conduct nexus studies for rates and fees.
 19. Applying range of geospatial analysis techniques to available or developed geospatial data sets. Lead and/or support the development of geospatial data that depicts the transportation system or other relevant data.
 20. Conduct before and after studies for project implementation. This could include using tools such as Synchro or Vissim to measure modal performance.
 21. Synthesize data collected and results of analysis into well written and easily understood memorandums and/or reports, including providing well designed graphics that convey technical information.
 22. Support development of area-specific (e.g., neighborhood) parking management plans.
 23. Develop travel demand forecasting and volume projections for all modes.
 24. Develop web-based data collection/presentation tools.

Department Liaison

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

**Appendix B
Calculations of Charges**

Billing Rates

SFMTA On-Call: Cost Plus Fixed Fee Rates

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
<i>Fehr & Peers</i>			10%
Principal II-IV	\$85.00	176.00%	\$258.06
Principal I	\$75.00	176.00%	\$227.70
Senior Associate II	\$70.00	176.00%	\$212.52
Senior Associate I	\$63.00	176.00%	\$191.27
Associate II	\$56.00	176.00%	\$170.02
Associate I	\$52.00	176.00%	\$157.87
Senior Engineer/Planner III	\$48.00	176.00%	\$145.73
Senior Engineer/Planner II	\$45.00	176.00%	\$136.62
Senior Engineer/Planner I	\$42.00	176.00%	\$127.51
Engineer/Planner III	\$39.00	176.00%	\$118.40
Engineer/Planner II	\$36.00	176.00%	\$109.30
Engineer/Planner I	\$33.00	176.00%	\$100.19
Senior Engineering Technician V	\$46.00	176.00%	\$139.66
Senior Engineering Technician IV	\$42.00	176.00%	\$127.51
Senior Engineering Technician III	\$38.00	176.00%	\$115.37
Senior Engineering Technician II	\$36.00	176.00%	\$109.30
Senior Engineering Technician I	\$34.00	176.00%	\$103.22
Technician III	\$33.00	176.00%	\$100.19
Technician II	\$30.00	176.00%	\$91.08
Technician I	\$28.00	176.00%	\$85.01
Senior Administrative Assistant IV	\$37.00	176.00%	\$112.33
Senior Administrative Assistant III	\$36.00	176.00%	\$109.30
Senior Administrative Assistant II	\$34.00	176.00%	\$103.22
Senior Administrative Assistant I	\$32.00	176.00%	\$97.15
Administrative Assistant III	\$30.00	176.00%	\$91.08
Administrative Assistant II	\$28.00	176.00%	\$85.01
Administrative Assistant I	\$26.00	176.00%	\$78.94
Intern	\$28.00	176.00%	\$85.01
<i>ICF</i>			
Senior Project Director	\$127.37	164.32%	\$290.00

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Project Director	\$88.27	164.32%	\$256.65
Technical Director	\$80.85	164.32%	\$235.07
Senior Technical Analyst	\$77.33	164.32%	\$224.84
Managing Consultant	\$71.50	164.32%	\$207.89
Senior Consultant III	\$66.50	164.32%	\$193.35
Senior Consultant II	\$57.48	164.32%	\$167.12
Senior Consultant I	\$52.50	164.32%	\$152.64
Associate Consultant III	\$49.75	164.32%	\$144.65
Associate Consultant II	\$44.90	164.32%	\$130.55
Associate Consultant I	\$39.43	164.32%	\$114.64
Associate Consultant	\$35.97	164.32%	\$104.58
Administrative Technician	\$24.25	164.32%	\$70.51
Technician	\$23.00	164.32%	\$66.87
Intern	\$18.00	164.32%	\$52.34
<i>Nelson-Nygaard</i>			
Principal IX	\$105.79	175.00%	\$320.00
Principal VIII	\$99.17	175.00%	\$300.00
Principal VII	\$89.26	175.00%	\$270.00
Principal VI	\$82.64	175.00%	\$250.00
Principal V	\$74.38	175.00%	\$225.00
Principal IV	\$69.42	175.00%	\$210.00
Principal III	\$64.46	175.00%	\$195.00
Principal II	\$59.50	175.00%	\$180.00
Principal II	\$56.20	175.00%	\$170.00
Senior Associate II	\$51.24	175.00%	\$155.00
Senior Associate I	\$47.93	175.00%	\$145.00
Associate IV	\$42.98	175.00%	\$130.00
Associate III	\$36.36	175.00%	\$110.00
Associate II	\$31.40	175.00%	\$95.00
Associate I	\$26.45	175.00%	\$80.00
Intern	\$19.83	175.00%	\$60.00
GIS, Communications	\$49.59	175.00%	\$150.00
Creative Services	\$42.98	175.00%	\$130.00
Project Accountant	\$36.36	175.00%	\$110.00
OpTteam/Communications Staff	\$36.36	175.00%	\$110.00
<i>LCW (LBE)</i>			

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Luba Wyznyckyj	\$210	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$210
<i>Adavant (LBE)</i>			
Jose Farran	\$210	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$210
<i>MSA (LBE)</i>			
Principal	\$67.26	103.00%	\$150.19
Project Manager	\$44.83	103.00%	\$100.11
<i>Walker Parking</i>			
Senior Principal	\$142.60	104.00%	\$320.00
Principal	\$115.86	104.00%	\$260.00
Senior Project Manager	\$106.95	104.00%	\$240.00
Project Manager	\$86.90	104.00%	\$195.00
Assistant Project Manager	\$73.53	104.00%	\$165.00
Senior Parking Consultant	\$106.95	104.00%	\$240.00
Parking Consultant	\$86.90	104.00%	\$195.00
Parking Analyst/Planner	\$73.53	104.00%	\$165.00
Senior Admin Assistant	\$42.34	104.00%	\$95.00
Administrative Assistant	\$35.65	104.00%	\$80.00
<i>Environ</i>			
Principal 11	\$81.73	173.45%	\$245.84
Principal Consultant 10A	\$74.39	173.45%	\$223.76
Manager 10	\$63.73	173.45%	\$191.70
Manager 9	\$52.54	173.45%	\$158.04
Manager 8	\$46.63	173.45%	\$140.26

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Associate 7	\$43.13	173.45%	\$129.73
Associate 6B	\$40.34	173.45%	\$121.34
Associate 6	\$36.57	173.45%	\$110.00
Associate 5	\$33.57	173.45%	\$100.98
Associate 4	\$29.47	173.45%	\$88.64
Associate 3	\$24.50	173.45%	\$73.69
Draftsperson	\$37.27	173.45%	\$112.11
Support	\$33.09	173.45%	\$99.53
<i>AECOM</i>			
Principal / Contract Manager	\$94.92	149.00%	\$260.00
Project Manager	\$82.12	149.00%	\$225.00
Senior Engineer	\$79.44	149.00%	\$218.00
Project Engineer	\$64.92	149.00%	\$178.00
Staff Engineer	\$57.64	149.00%	\$158.00
CADD Operator/Drafter	\$43.81	149.00%	\$120.00
Project Assistant	\$31.03	149.00%	\$85.00
<i>Bruce Schaller</i>			
Bruce Schaller	\$275	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$275
<i>Fall Line Analytics (LBE)</i>			
David Latterman	\$200	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$200
<i>Ward & Associates (LBE)</i>			
Principal	\$70.00	145.00%	\$188.65
Senior Planner	\$55.00	145.00%	\$148.23

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Planner	\$45.00	145.00%	\$121.28
Research Associate	\$36.00	145.00%	\$97.02
<i>Panorama (LBE)</i>			
Principal	\$77	178.00%	\$235.47
Senior Manager	\$67	178.00%	\$205.83
Senior Project Manager/Scientist IV	\$65	178.00%	\$199.93
Project Manager/Scientist III	\$50	178.00%	\$154.37
Environmental Scientist II/Staff III	\$36	178.00%	\$110.27
Environmental Scientist I	\$31	178.00%	\$95.56
GIS Specialist	\$41	178.00%	\$124.98
Graphic Specialist	\$41	178.00%	\$125.38
Senior Biologist	\$50	178.00%	\$152.90
<i>Alfred Williams (LBE)</i>			
Principal	\$98.47	120.00%	\$238.30
Project Manager	\$77.73	120.00%	\$188.11
<i>Verplanck (LBE)</i>			
Chris VerPlanck	\$135	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$135
<i>Prevision (LBE)</i>			
Adam Phillips	\$175	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$175
<i>GTC (LBE)</i>			

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Neel Neelakantan	\$220	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$220
Aurie Patterson	\$165	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$165
James Thurber	\$200	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$200

**Appendix C
Task Order Request Form**

**San Francisco Municipal Transportation Agency
SFMTA-2016-11/1 (FTA)**

Consultant Name: _____

TASK ORDER DESCRIPTION

Type of Request: _____ Date Initiated: _____ <input type="checkbox"/> New Task Order- No. _____ PSC Balance as of this request: _____ <input type="checkbox"/> Modification - No. _____
SBE Goal (%): _____ (attach CCO approval memo) Total Budget Amount: \$ _____ Index Code: _____ Amount: \$ _____ Index Code: _____ Amount: \$ _____ [Insert additional lines for budget and index codes as required]
TASK TITLE
BRIEF SUMMARY OF WORK TO BE PERFORMED
SCHEDULE Start Date: _____ Estimated Completion Date: _____
APPROVALS Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section] Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section] Approved _____ Date: _____ Tom Maguire Director of Sustainable Streets

Appendix D
Consultant Checklist for Document Submittals

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)

Task Order Number: _____

Task Order Title: _____

This checklist must be filled in by the consultant and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

14. Document is edited for grammatical and typographical errors, clarity, and format.
15. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
16. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
17. All document sections, tables, figures, appendices, etc. are submitted.
18. Footnotes are on same page as the reference (no endnotes).
19. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
20. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
21. Data in tables and figures are cross-checked with text.
22. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
23. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
24. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
25. All document background reports are finalized and included with the submittal packet.
26. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Consultant at the Task Order level:

- a. Date / Times;
- b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
- c. Name and contact information of consultant performing the count effort;
- d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)
 - ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e., LAGUNA CLAY PM);
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
- f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
- g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

Notes:

Firm Name: _____

Consultant Name: _____

Consultant Signature: _____

Date: _____

Appendix E
FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

I. DEFINITIONS

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

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

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

IV. DEBARMENT AND SUSPENSION

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

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

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

VI. CIVIL RIGHTS

- A. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

1. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 2. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 3. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

VII. DBE/SBE ASSURANCES

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

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

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

- A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of

America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

- B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

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

transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

4. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
 5. **Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 6. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
 7. **Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- C. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- D. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

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

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

XI. ENERGY CONSERVATION REQUIREMENTS

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

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

- A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

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

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

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

XIV. PRIVACY

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

XV. DRUG AND ALCOHOL TESTING

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XVIII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent

claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XIX. FLY AMERICA

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

XX. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

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

- A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - 1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract

and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

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

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

XXIII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that

adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

XXIV. SEAT BELT USE

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

Appendix F
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SBE REQUIREMENTS

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

I. POLICY

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

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

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

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

A. Applicability

Pursuant to 49 C.F.R. Sections 26.3 and 26.21, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement an SBE Program in accordance with the Regulations. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by DOT federal financial assistance.

B. Objectives

The objectives of this program are to:

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

C. Administration of Program

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

D. Prohibited Discrimination

SFMTA shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the basis of (the fact or perception of a person's) race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

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

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

II. DEFINITIONS

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

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

III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE Participation Goal

A goal of 30 percent SBE participation has been established for this contract. This SBE goal will apply to the following types of contracts or scope of work in the contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

B. Determining the Amount of SBE Participation

The SFMTA strongly encourages the prime contractor to make every good faith effort to include SBEs to perform meaningful work in all aspects of the projects. To accomplish this goal, the following guidance is provided:

1. SBE Participation

SBE participation includes contracts (other than employee contracts) with SBEs for any goods or services specifically required for the completion of the work under the

Agreement. An SBE may participate as a prime contractor/consultant, subcontractor/consultant, joint venture partner with a prime or consultant, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement.

2. Function

An SBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work. However, an SBE may contract out a portion of the work if it is considered to be a normal industry practice. If an SBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE shall be presumed not to be performing a commercially useful function.

3. Determining the amount of SBE Participation

SBE participation includes that portion of the contract work actually performed by a certified SBE with its own forces. An SBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by the contract.

An SBE's participation can only be counted if it is performing a commercially useful function.. An SBE is performing a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE is not responsible for at least 30 percent of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function.

The Contractor shall determine the amount of SBE participation for each SBE performing work on the contract in terms of both the total value of the work in dollars and the percentage of the total contract bid price. The Contractor shall also determine the total amount of SBE participation for the entire contract. The Contractor shall count SBE participation according to the following guidelines:

a. SBE Prime Contractor

Count the entire dollar amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE participation by the SBE Prime Contractor.

b. SBE Subcontractor

Count the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Contractor) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE subcontractor to another firm as SBE participation by said SBE subcontractor. If the work has been subcontracted to another SBE, it will be counted as SBE participation by that other SBE.

c. SBE Joint Venture Partner

Count the portion of the work that is performed solely by the SBE's forces or if the work is not clearly delineated between the SBE and the joint venture partner, count the portion of the work equal to the SBE's percentage of ownership interest in the joint venture.

d. SBE Regular Dealer

Count 60 percent of the costs of materials and supplies obtained from an SBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business (except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business). This applies whether an SBE is a prime contractor or subcontractor.

e. Other SBEs

Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from an SBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

C. Submission of Certification for SBEs

All firms wishing to receive credit for participation under the SFMTA's SBE Program must be certified as bona fide SBEs with the SFMTA. This requires either submission of: (1) the completed certification applications for either SBEs, DBEs, or LBEs, or (2) submission of the SFMTA's small business verification application. For information regarding where to obtain applications for these certifications, please contact the SFMTA Contract Compliance Office at:

San Francisco Municipal Transportation Agency
Contract Compliance Office
One South Van Ness Avenue 6th floor
San Francisco, California 94103

(415) 701-4362
Attn: Sheila Evans-Peguese

D. Contract Assurances

The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The Contractor and its subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

E. Use of SBE Firms

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

F. Substitution of Subconsultants and Suppliers

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

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

G. Addition of Subconsultants and Suppliers

The Consultant shall notify CCO prior to any addition of an SBE or non-SBE subconsultant or supplier to the project. Submit SBE SFMTA Form No. 4 for each new SBE subconsultant or supplier. Any new SBE subconsultant or supplier approved by CCO also must submit SFMTA SBE Form No. 5.

H. Prompt Payment to Subcontractors

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

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

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

IV. MONITORING AND COMPLIANCE

A. SBE Records; Reporting Requirements

The Contractor shall maintain records of all SBE participation in the performance of the contract including subcontracts entered into with certified SBEs and all materials purchased from certified SBEs.

The Contractor shall submit SBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Contractor shall submit a final summary SBE report to the CCO.

B. Noncompliance; Administrative Remedies

SFMTA will implement appropriate mechanisms to ensure that its prime contractors and subcontractors comply with SBE Program regulatory requirements. SFMTA will apply legal and contractual remedies available under federal, state and local law.

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

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

**Agreement between the City and County of San Francisco
and
Fehr & Peers Associates**

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

**Agreement between the City and County of San Francisco
and
Fehr & Peers Associates
Contract No. SFMTA 2016-12/1**

This Agreement is made this _____ day of _____, 20__, in the City and County of San Francisco, State of California, by and between Fehr & Peers Associates, 332 Pine Street, 4th Floor, San Francisco, CA 94104 (“Contractor”) and City.

Recitals

- A** The SFMTA wishes to contract with a qualified firm to provide services for As Needed Environmental Analysis, Transportation Analysis, and Documentation.
The Contractor must be able to provide broad range of services to complete task orders issued by the SFMTA.
- B** The SFMTA issued a Request for Proposals (RFP) on October 14, 2015, and selected Contractor as one of two highest qualified scorer pursuant to the RFP.
- C** The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 25 %.
- D** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- E** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 42016-15/16 on November 16, 2015.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

- 1.1 Acceptance:** The formal written acceptance by the City and County of San Francisco that all work, or a specific portion thereof, under the contract has been satisfactorily completed.
- 1.2 Agreement or Contract:** This Agreement and all referenced Appendices to this Agreement, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference.
- 1.3 Award:** Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute the Contract with the selected proposer.
- 1.4 Certification:** Certification by the Controller that funds necessary to make payments as required under the contract are available in accordance with the City's Charter.
- 1.5 City:** The City and County of San Francisco, a municipal corporation, acting by and through the SFMTA.
- 1.6 CMD.** The Contract Monitoring Division of the City.
- 1.7 Contract Compliance Office (CCO):** The SFMTA office that administers compliance with federal regulations governing the Disadvantaged Business Enterprises/Equal Employment and Non-Discrimination Programs, in addition to the SFMTA Small Business Enterprise Program and the City's Local Business Enterprise/Non-Discrimination Program.
- 1.8 Contract Modification or Amendment:** A written order, issued by the City to Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.
- 1.9 Contractor or Consultant:** Fehr & Peers Associates
- 1.10 Controller:** Controller of the City.
- 1.11 Days:** Unless otherwise designated, the word "Days" refers to working days of the City, which are generally Monday through Friday, excluding holidays. The use of the term "days," "working days" or "business days" in this Agreement shall be synonymous.
- 1.12 Deliverables:** Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.
- 1.13 Director:** The Director of Transportation of the SFMTA or his/her designee.

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

1.15 Federal Highway Administration (FHWA): An operating administration of the U.S. Department of Transportation (DOT)

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

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

1.18 Mandatory City Requirements: Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.

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

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

1.21 Project Manager: The designated SFMTA employee who will assume all duties and responsibilities to manage the Contract.

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

1.23 Request for Proposals; RFP: The Request for Proposals for As-Needed Engineering Services issued by the SFMTA on November 17, 2015.

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

1.25 San Francisco Municipal Transportation Agency (the SFMTA or Agency): The agency of the City that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the former Department of Parking and Traffic, with exclusive authority over contracting, leasing and purchasing by the Agency.

1.26 Services: The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

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

1.28 Task Order: A written directive from the SFMTA to the Consultant to perform specified work.

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the latter of: (i) _____ 2016; or (ii) the Effective Date, and expire on _____, 2018, unless earlier terminated as otherwise provided herein.

2.2 The City has three options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

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

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

3.2 Guaranteed Maximum Costs. The City's payment obligation to Contractor

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

3.3 Compensation.

3.3.1 Payment Amount. Compensation under this Agreement shall be based on a negotiated lump sum price per task or subtask. In no event shall the amount of this Agreement exceed four hundred sixty-six thousand two hundred ninety-five dollars (\$466,295).

3.3.2 Method of Computing Compensation.

(a) **Hourly Rates.** The hourly rates in Appendix B shall be fixed at that level until 12 months after effective date of this Agreement. The hourly rates are "fully burdened," including all indirect/overhead costs and services such as reproduction, administrative staff assistance, etc. Hourly rates in Appendix B may be adjusted 12 months after the effective date of this Agreement. The rate increases shall not exceed 4.5 percent of the rates listed in Appendix B. No hourly rate may be increased without prior written approval of the SFMTA.

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

(c) **Out-of-Pocket Expenses.** The SFMTA will reimburse Consultant for the actual cost of approve out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses are to be pre-approved by the SFMTA and Consultant must obtain the best air fare available in a timely fashion. All travel receipts must accompany the invoice.

(d) **Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be

reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for the services of this Agreement. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable.

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

3.4 Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the SFMTA's designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the City be liable for interest or late charges for any late payments.

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

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

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

submit invoices in quadruplicate with each invoice containing the following information:

- (a) Contract Number
- (b) Task Order Number
- (c) Description of the work performed or services rendered
- (d) Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced
- (e) Subconsultant costs supported by invoice itemization in the same format as described here
- (f) Total costs

3.4.4 DBE Payment. Contractor must submit all required payment forms to enable CCO to monitor Contractor's compliance with the DBE subcontracting commitments in this Agreement. Contractor shall pay its DBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the SBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required payment forms. Failure to submit all required payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a required forms to verify its payments to DBE subcontractors.

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

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

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

3.5 Grant-Funded Contracts

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

3.5.2 FHWA Requirements. The provisions contained in "U.S. DOT Contract Requirements," attached to this Agreement as Appendix E, is incorporated into this Agreement. If there is any conflict between the FHWA terms and conditions and any other terms and conditions of this Agreement, the FHWA terms and conditions shall take precedence.

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

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

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A, “Scope of Services.” Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, “Modification of this Agreement.” The Contractor shall provide high quality submittals that will require minimal revisions by SFMTA and, when applicable, be fully consistent with the City’s technical review process. Contractor shall adhere to the quality assurance guidelines set forth in Appendix D, “SFMTA Consultant Checklist for Document Submittals,” and respond fully and promptly to requests for revisions to initial submittals from the City in order to finalize documents.

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

4.3 Information and Data. The Consultant shall request in writing any information and data it will require to prepare a proposal, or perform work described in the Task Order. The Consultant shall identify the timing and priority for which this information and data will be required. The Consultant and City shall reach agreement as to the availability and delivery time for this information and data during initial task negotiations.

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

4.5 Task Requirements. The SFMTA will define Task requirements. The scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required LBE forms, and the Consultant Proposal must be incorporated into the overhead rate (as approved in Appendix B) or in the project management line item. Additionally, project management costs may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, a task monitoring system (e.g., bi-weekly project reports or monthly status updates). Consultant time spent managing or overseeing work performed by

subconsultants will not be compensable.

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

4.5.2 Consultant Proposal. The Consultant shall prepare and submit a proposal for the task showing:

(a) A work plan that includes a detailed description by subtask or deliverable of the work to be performed and the means and methods that will be used to perform it;

(b) A schedule by task and deliverable, including key milestones and/or critical path deliverables;

(c) Personnel and the Subconsultants (in accordance with Appendix B) assigned to each part of the work along with a resume or curriculum vitae that indicates why such personnel are qualified to perform the work; and prior experience in performing work of this nature;

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

(i) Estimated hours and hourly rates by position including overhead and profit as listed in Appendix B for both Consultant and Subconsultant personnel. Labor hours for preparing monthly invoices or filling out required LBE forms will not be allowed. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

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

(iii) Proposed profit as follows: Total profit/mark up of each Task Order as fixed fee amount not to exceed seven percent of total amount of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Consultant, Subconsultant(s) or combination thereof.

4.5.3 Negotiation of Cost. The City will review the proposal and negotiate a lump sum price to perform the work of each task, subtask and/or deliverable and a total cost not to exceed for the task.

4.5.4 Subcontracting Goals. The CCO will review the final negotiated Task Order scope and schedule to determine the LBE goal and issue a memo to file by CMD. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the

overall goal set forth in the Agreement.

4.5.5 Record of Negotiations. The City will document the negotiations and any agreement in a Record of Negotiations.

4.5.6 Controller Certification. The City will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

4.5.7 Notice to Proceed. After certification, the City will send to the Consultant a written NTP and Task Order number. The Consultant shall use the Task Order number when submitting invoices to the City for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.

4.5.8 Changes. Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of work of the task(s). If there is a material change in the scope of work of a task, then a proposal, negotiations, and Record of Negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

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

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

Chris Mitchell, Eric Womeldorff, Andy Kosinski, Bob Grandy, Nate Conable, Dana Weissman, Geoff Rubendall, Sarah Nadiranto, Teresa Whinery

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

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

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

4.9 Reserved (Reproduction of Work Product).

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

If Consultant considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Program Management/Implementation Plan, the Consultant shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.7 above.

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

below:

ICF, Nelson Nygaard, LCW Consulting, Adavant Consulting, MSA Design & Consulting, Walker Parking, Ramboll Environ, AECOM, Bruce Schaller Consulting, Fall Line Analytics, Ward & Associates, Panorama, Alfred Williams Consultancy, Verplanck Historic Preservation Consulting, Prevision, Geotechnical Consultants Inc,

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

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

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

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

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

Article 5 Insurance and Indemnity

5.1 Insurance.

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

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

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

(d) Professional liability insurance, applicable to Contractor’s profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement; and

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

1. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or personal information or other personally identifying information, stored or transmitted in electronic form;
2. Network security liability arising from the unauthorized access to, use of, or tampering with, computers or computer systems, including hacker attacks; and
3. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City’s or third person’s computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

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

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

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

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

and title on the cover page.

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

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

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

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

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

5.2 Indemnification.

For the purpose of this Agreement, Section 5.2.a will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by unlicensed service providers, and Section 5.2.b will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by licensed design professionals or a combination of licensed design professionals and unlicensed service providers.

(a) Unlicensed Service Providers. For any claim or action arising from Services performed by Contractor or any subconsultant for which the relevant Task Order and California law does not require the person performing the Services hold a professional license, Contractor shall indemnify and defend the City as provided in this Section 5.2.a.

The Contractor shall indemnify and hold harmless City and its officers,

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

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

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

(b) Licensed Design Professionals. For any claim or action arising from Services performed by Contractor or any subconsultant for which the relevant Task Order and California law requires the person performing the Services hold a professional license (including but not limited to work that must be performed by a licensed professional engineer, architect, or traffic engineer), Contractor shall indemnify and defend the City as provided in this Section 5.2.b.

To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an

employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

Article 6 Liability of the Parties

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

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

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

Article 7 Payment of Taxes

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

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

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

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

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

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

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

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

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

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

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

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

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

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

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

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

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

lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

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

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

8.2 Termination for Default; Remedies.

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

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

3.7	Submitting False Claims.
4.13	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.4	Nondisclosure of Private, Proprietary or Confidential Information
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws

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

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction;

(iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

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

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

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

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

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

8.4 Rights and Duties upon Termination or Expiration.

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

3.4.1	Payment Limited to Satisfactory Services
3.5.1	Grant Funded Contracts - Disallowed
3.6	Audit and Inspection of Records
3.7	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
10.4	Nondisclosure of Private, Proprietary or Confidential Information
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability

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

Article 9 Rights In Deliverables

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

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

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at www.sfgov.org under "Government."

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

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

10.4 Nondisclosure of Private, Proprietary or Confidential Information.

10.4.1 If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M. For purposes of this Agreement, Private Information shall also include vehicle license plate information and other information that would allow individuals recorded in Contractor created videos to be identified.

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

10.4.3 Notwithstanding any provision in this Agreement, Contractor shall not deliver to City in any form or medium, nor shall it incorporate into any information, data, document, or work product to be delivered to City, any Private Information that Contractor may collect or use in performing the Services, or that may otherwise be in Contractor's possession or control, and none of such Private Information shall be a work for hire or belong to City.

10.5 Nondiscrimination Requirements

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

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

10.6 Disadvantaged Business Enterprise Program.

10.6.1 General. The SFMTA is committed to a Disadvantaged Business Enterprise Program (DBE Program) for the participation of DBEs in contracting opportunities. In addition, the Consultant must comply with all applicable federal regulations regarding DBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to DBEs performing work under this Agreement. More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

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

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

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

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

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

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

which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

10.12 Reserved. (Slavery Era Disclosure).

10.13 Reserved. (Working with Minors).

10.14 Consideration of Criminal History in Hiring and Employment Decisions

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

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the

employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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

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

10.17 Reserved. (Sugar-Sweetened Beverage Prohibition).

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

10.19 Reserved. (Preservative Treated Wood Products).

Article 11 General Provisions

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

To City: Amber Vasché
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103
E-mail: amber.vasche@sfmta.com

To Contractor: Eric Womeldorff, Senior Associate
Fehr & Peers
332 Pine Street, 4th Floor
San Francisco, California 94104
Email: e.womeldorff@fehrandpeers.com

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

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

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

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

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

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

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

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

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated November 17, 2015. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 MacBride Principles And Signature

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

employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

Article 13 Large Vehicle Driver Safety Training Requirements

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

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

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

CITY	CONTRACTOR
<p>San Francisco Municipal Transportation Agency</p> <p>_____</p> <p>Edward D. Reiskin Director of Transportation</p> <p>San Francisco Municipal Transportation Agency Board of Directors Resolution No. _____ Adopted: _____ Attest:</p> <p>_____</p> <p>Secretary, SFMTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Rob Stone Deputy City Attorney</p>	<p>Fehr & Peers Associates</p> <p>_____</p> <p>Eric Womeldorff, Senior Associate</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 59841</p>

Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Form
- D: Consultant Checklist for Document Submittals
- E: FHWA Requirements for Personal Services Contracts

Appendix A Scope of Services

Description of Services

Consultant agrees to perform the following Services pursuant to the terms and conditions of this agreement between Fehr and Peers and the SFMTA, exercising the same degree of care, skill, and diligence as is ordinarily possessed and exercised by professionals providing similar services, currently practicing, under similar circumstances.

From time-to-time, it could be necessary for the consultant staff to perform the work on-site at the SFMTA offices to perform day-to-day services (e.g., CAD work). In advance of this work occurring, SFMTA and Fehr and Peers will agree on the parameters of this work arrangement.

G. Environmental Analysis and Documentation Services (CEQA and NEPA)

The Consultant(s) shall be responsible for preparing CEQA and/or NEPA analysis in partnership with SFMTA environmental review staff and project managers and in consultation, or under the direction of, the Planning Department. The tasks shall include but not be limited to the following:

21. Initial consultation for determining the level of environmental review that would be required and overall environmental review approach.
22. Provide environmental review and analysis of proposed SFMTA projects and policies; prepare documents for compliance with CEQA, including, but not limited to, Exemptions, Initial Studies / Environmental Evaluation Checklist, Negative Declaration / Mitigated Negative Declaration, Draft and Final Environmental Impact Reports (EIR), Addendums, Supplemental and Subsequent EIRs, Mater EIRs and any other CEQA documents or portions thereof including the technical studies to support such documents.
23. Preparation of NEPA documents, such as but not limited to Categorical Exclusion memos/forms, Initial Studies, Environmental Assessments, Findings of No Significant Impacts, addenda or portions of aforementioned documents as well as documents necessary for Section 106 and 4(f) compliance and any other documents to support NEPA documentation.
24. Preparation or review of specialized studies in the following areas:
 - a. Architectural History / Cultural Landscapes/ Historic Architectural;
 - b. Archaeological;
 - c. Biological;
 - d. Geological;
 - e. Hazardous materials;
 - f. Energy & Greenhouse Gas (GHG) emissions;

- g. Water Quality;
 - h. Noise and vibration;
 - i. Aesthetics and Visual impacts;
 - j. Wind impacts;
 - k. Air Quality;
 - l. Transportation analyses for environmental review, including but not limited to preparing Transportation Impact Studies, Synchro analysis of traffic level of service impacts from transportation projects, Vehicle Miles Traveled analysis, safety analysis, traffic device warrants, parking occupancy and utilization analysis, assessment of project impacts on transit, pedestrian and bicycle travel, loading impacts, emergency vehicle access impacts and assessments of cumulative/future traffic impacts. Analyses will be consistent with SFMTA guidance and the SF Planning Department's Transportation Impact Analysis Guidelines for Environmental Review under the direction of the SF Planning Department;
 - m. Title VI and environmental justice;
 - n. Socioeconomics;
 - o. Conduct analysis to support sea level rise vulnerability assessment; and
 - p. Mitigation Monitoring and Reporting Programs.
25. Conducting or assisting with scoping sessions and other agency and public outreach meetings.
 26. Preparing analyses or memos on environmental strategy and procedures (e.g, best practices or typical practices regarding environmental review for SFMTA projects and programs).
 27. Coordination of comments and preparation of responses from CEQA responsible agencies, along with other public and private stakeholder on draft and final SFMTA environmental documents.
 28. Implementing and reporting on mitigation monitoring programs.
 29. Review of proposed changes to CEQA and/or NEPA and drafting comment memos in response to those changes.
 30. Other related tasks as may be necessary to complete CEQA and NEPA review, including but not limited to review of documents prepared by the Planning Department and/or other Lead Agencies.

H. Transportation Analysis and Engineering Services

The Consultant(s) shall be responsible for preparing transportation analysis and engineering services. The tasks shall include but not be limited to the following:

23. Propose and evaluate physical design improvements for complete streets projects, Parking related projects, and Parking and intermodal facilities such as transit hubs.

24. Recommend designs to improve traffic circulation patterns to reduce conflicts between transportation modes, including signalization, roadway design, and traffic.
25. Recommend and/or assess bicycle and pedestrian project designs in support of Vision Zero and Bicycle Strategy projects.
26. Drafting various design standards based on industry best practices.
27. Perform arterial, freeway, and other operational analysis using Highway Capacity Manual and related methodologies and software programs.
28. Conduct micro-simulation (e.g., Vissim) to review potential changes to the network, including but not limited to signals, signal progression, transit signal priority treatments, etc.
29. Conduct feasibility-level engineering studies.
30. Develop materials to convey transportation engineering analysis and recommendations to the general public through various written and visual media including but not limited to justifications, 3D renderings, maps and charts.
31. Perform intersection and roadway safety analysis using Highway Safety Manual and related methodologies.
32. Develop and perform project screening and prioritization.
33. Transportation Equity Analysis

I. Transportation Data Collection and Analytics

The Consultant(s) selected shall be responsible for data collection, analytics and presentation of findings. The tasks shall include but not be limited to the following:

25. Pedestrian, bicycle, and vehicle circulation and parking utilization surveys, turning movement and directional counts of multiple modes (including but not limited to speed surveys, tube counts, vehicle classification, video counts, manual counts, etc.). Counts may need to be coordinated across the city and include numerous locations. Data collection information will be in the format specified by the SFMTA, but must include, and is not limited to, the following information:
 - a. Date / Times;
 - b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
 - c. Name and contact information of consultant performing the count effort;
 - d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e. 30TH ST EB EAST OF GUERRERO)
 - ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e. LAGUNA CLAY PM);

- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
 - f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
 - g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.
26. Development, application, and analysis of surveys and market research of people using specific modes of travel to understand demographics, origins and destinations, trip making patterns, and other factors influencing travel mode choice. This could include intercept type surveys and license plate collection surveys.
 27. Research and analysis of transportation policies, including existing City and SFMTA-specific policies, and global and US/North American best practices. Outcomes to include recommendations for strategic policies.
 28. Conduct analysis of existing agency data and data from external vendors to identify and analyze travel markets, parking utilization and pricing, transit ridership, congestion metrics as well as other performance metrics.
 29. Conduct Cost/Benefit analysis for transportation related projects, including federal TIGER grant applications and conduct value capture analysis of benefits of major transit investments adjacent to new development.
 30. Provide support with development of grant proposals. Lead and/or support the development and implementation of revenue models and analysis for citywide variable-rate pricing related to parking; conduct nexus studies for rates and fees.
 31. Applying range of geospatial analysis techniques to available or developed geospatial data sets. Lead and/or support the development of geospatial data that depicts the transportation system or other relevant data.
 32. Conduct before and after studies for project implementation. This could include using tools such as Synchro or Vissim to measure modal performance.
 33. Synthesize data collected and results of analysis into well written and easily understood memorandums and/or reports, including providing well designed graphics that convey technical information.
 34. Support development of area-specific (e.g., neighborhood) parking management plans.
 35. Develop travel demand forecasting and volume projections for all modes.
 36. Develop web-based data collection/presentation tools.

Department Liaison

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

**Appendix B
Calculations of Charges**

Billing Rates

SFMTA On-Call: Cost Plus Fixed Fee Rates

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
<i>Fehr & Peers</i>			10%
Principal II-IV	\$85.00	176.00%	\$258.06
Principal I	\$75.00	176.00%	\$227.70
Senior Associate II	\$70.00	176.00%	\$212.52
Senior Associate I	\$63.00	176.00%	\$191.27
Associate II	\$56.00	176.00%	\$170.02
Associate I	\$52.00	176.00%	\$157.87
Senior Engineer/Planner III	\$48.00	176.00%	\$145.73
Senior Engineer/Planner II	\$45.00	176.00%	\$136.62
Senior Engineer/Planner I	\$42.00	176.00%	\$127.51
Engineer/Planner III	\$39.00	176.00%	\$118.40
Engineer/Planner II	\$36.00	176.00%	\$109.30
Engineer/Planner I	\$33.00	176.00%	\$100.19
Senior Engineering Technician V	\$46.00	176.00%	\$139.66
Senior Engineering Technician IV	\$42.00	176.00%	\$127.51
Senior Engineering Technician III	\$38.00	176.00%	\$115.37
Senior Engineering Technician II	\$36.00	176.00%	\$109.30
Senior Engineering Technician I	\$34.00	176.00%	\$103.22
Technician III	\$33.00	176.00%	\$100.19
Technician II	\$30.00	176.00%	\$91.08
Technician I	\$28.00	176.00%	\$85.01
Senior Administrative Assistant IV	\$37.00	176.00%	\$112.33
Senior Administrative Assistant III	\$36.00	176.00%	\$109.30
Senior Administrative Assistant II	\$34.00	176.00%	\$103.22
Senior Administrative Assistant I	\$32.00	176.00%	\$97.15
Administrative Assistant III	\$30.00	176.00%	\$91.08
Administrative Assistant II	\$28.00	176.00%	\$85.01
Administrative Assistant I	\$26.00	176.00%	\$78.94
Intern	\$28.00	176.00%	\$85.01
<i>ICF</i>			
Senior Project Director	\$127.37	164.32%	\$290.00

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Project Director	\$88.27	164.32%	\$256.65
Technical Director	\$80.85	164.32%	\$235.07
Senior Technical Analyst	\$77.33	164.32%	\$224.84
Managing Consultant	\$71.50	164.32%	\$207.89
Senior Consultant III	\$66.50	164.32%	\$193.35
Senior Consultant II	\$57.48	164.32%	\$167.12
Senior Consultant I	\$52.50	164.32%	\$152.64
Associate Consultant III	\$49.75	164.32%	\$144.65
Associate Consultant II	\$44.90	164.32%	\$130.55
Associate Consultant I	\$39.43	164.32%	\$114.64
Associate Consultant	\$35.97	164.32%	\$104.58
Administrative Technician	\$24.25	164.32%	\$70.51
Technician	\$23.00	164.32%	\$66.87
Intern	\$18.00	164.32%	\$52.34
<i>Nelson-Nygaard</i>			
Principal IX	\$105.79	175.00%	\$320.00
Principal VIII	\$99.17	175.00%	\$300.00
Principal VII	\$89.26	175.00%	\$270.00
Principal VI	\$82.64	175.00%	\$250.00
Principal V	\$74.38	175.00%	\$225.00
Principal IV	\$69.42	175.00%	\$210.00
Principal III	\$64.46	175.00%	\$195.00
Principal II	\$59.50	175.00%	\$180.00
Principal II	\$56.20	175.00%	\$170.00
Senior Associate II	\$51.24	175.00%	\$155.00
Senior Associate I	\$47.93	175.00%	\$145.00
Associate IV	\$42.98	175.00%	\$130.00
Associate III	\$36.36	175.00%	\$110.00
Associate II	\$31.40	175.00%	\$95.00
Associate I	\$26.45	175.00%	\$80.00
Intern	\$19.83	175.00%	\$60.00
GIS, Communications	\$49.59	175.00%	\$150.00
Creative Services	\$42.98	175.00%	\$130.00
Project Accountant	\$36.36	175.00%	\$110.00
OpTteam/Communications Staff	\$36.36	175.00%	\$110.00
<i>LCW (LBE)</i>			

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Luba Wyznyckyj	\$210	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$210
<i>Adavant (LBE)</i>			
Jose Farran	\$210	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$210
<i>MSA (LBE)</i>			
Principal	\$67.26	103.00%	\$150.19
Project Manager	\$44.83	103.00%	\$100.11
<i>Walker Parking</i>			
Senior Principal	\$142.60	104.00%	\$320.00
Principal	\$115.86	104.00%	\$260.00
Senior Project Manager	\$106.95	104.00%	\$240.00
Project Manager	\$86.90	104.00%	\$195.00
Assistant Project Manager	\$73.53	104.00%	\$165.00
Senior Parking Consultant	\$106.95	104.00%	\$240.00
Parking Consultant	\$86.90	104.00%	\$195.00
Parking Analyst/Planner	\$73.53	104.00%	\$165.00
Senior Admin Assistant	\$42.34	104.00%	\$95.00
Administrative Assistant	\$35.65	104.00%	\$80.00
<i>Environ</i>			
Principal 11	\$81.73	173.45%	\$245.84
Principal Consultant 10A	\$74.39	173.45%	\$223.76
Manager 10	\$63.73	173.45%	\$191.70
Manager 9	\$52.54	173.45%	\$158.04

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Manager 8	\$46.63	173.45%	\$140.26
Associate 7	\$43.13	173.45%	\$129.73
Associate 6B	\$40.34	173.45%	\$121.34
Associate 6	\$36.57	173.45%	\$110.00
Associate 5	\$33.57	173.45%	\$100.98
Associate 4	\$29.47	173.45%	\$88.64
Associate 3	\$24.50	173.45%	\$73.69
Draftsperson	\$37.27	173.45%	\$112.11
Support	\$33.09	173.45%	\$99.53
<i>AECOM</i>			
Principal / Contract Manager	\$94.92	149.00%	\$260.00
Project Manager	\$82.12	149.00%	\$225.00
Senior Engineer	\$79.44	149.00%	\$218.00
Project Engineer	\$64.92	149.00%	\$178.00
Staff Engineer	\$57.64	149.00%	\$158.00
CADD Operator/Drafter	\$43.81	149.00%	\$120.00
Project Assistant	\$31.03	149.00%	\$85.00
<i>Bruce Schaller</i>			
Bruce Schaller	\$275	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$275
<i>Fall Line Analytics (LBE)</i>			
David Latterman	\$200	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$200
<i>Ward & Associates (LBE)</i>			

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
Principal	\$70.00	145.00%	\$188.65
Senior Planner	\$55.00	145.00%	\$148.23
Planner	\$45.00	145.00%	\$121.28
Research Associate	\$36.00	145.00%	\$97.02
<i>Panorama (LBE)</i>			
Principal	\$77	178.00%	\$235.47
Senior Manager	\$67	178.00%	\$205.83
Senior Project Manager/Scientist IV	\$65	178.00%	\$199.93
Project Manager/Scientist III	\$50	178.00%	\$154.37
Environmental Scientist II/Staff III	\$36	178.00%	\$110.27
Environmental Scientist I	\$31	178.00%	\$95.56
GIS Specialist	\$41	178.00%	\$124.98
Graphic Specialist	\$41	178.00%	\$125.38
Senior Biologist	\$50	178.00%	\$152.90
<i>Alfred Williams (LBE)</i>			
Principal	\$98.47	120.00%	\$238.30
Project Manager	\$77.73	120.00%	\$188.11
<i>Verplanck (LBE)</i>			
Chris VerPlanck	\$135	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$135
<i>Prevision (LBE)</i>			
Adam Phillips	\$175	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed	\$175

Company	Unburdened Hourly Rate	Overhead Rate (Audited)	Profit
		to use standard hourly rate.	
<i>GTC (LBE)</i>			
Neel Neelakantan	\$220	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$220
Aurie Patterson	\$165	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$165
James Thurber	\$200	Small LBE/sole proprietor. Therefore, do not have audited labor/overhead rates; proposed to use standard hourly rate.	\$200

**Appendix C
Task Order Request Form**

San Francisco Municipal Transportation Agency

SFMTA-2016-12/1 (FHWA)

Consultant Name: _____

TASK ORDER DESCRIPTION

Type of Request: _____ Date Initiated: _____ <input type="checkbox"/> New Task Order- No. _____ PSC Balance as of this request: _____ <input type="checkbox"/> Modification - No. _____
DBE Goal (%): _____ (attach CCO approval memo) Total Budget Amount: \$ _____ Index Code: _____ Amount: \$ _____ Index Code: _____ Amount: \$ _____ [Insert additional lines for budget and index codes as required]
TASK TITLE
BRIEF SUMMARY OF WORK TO BE PERFORMED
SCHEDULE Start Date: _____ Estimated Completion Date: _____
APPROVALS Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section] Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section] Approved _____ Date: _____ Tom Maguire Director of Sustainable Streets

Appendix D
Consultant Checklist for Document Submittals

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)

Task Order Number: _____

Task Order Title: _____

This checklist must be filled in by the consultant and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

27. Document is edited for grammatical and typographical errors, clarity, and format.
28. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
29. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
30. All document sections, tables, figures, appendices, etc. are submitted.
31. Footnotes are on same page as the reference (no endnotes).
32. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
33. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
34. Data in tables and figures are cross-checked with text.
35. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
36. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
37. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
38. All document background reports are finalized and included with the submittal packet.
39. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Consultant at the Task Order level:
 - a. Date / Times;

- b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
- c. Name and contact information of consultant performing the count effort;
- d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)
 - ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e., LAGUNA CLAY PM);
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
- f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
- g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

Notes:

Firm Name: _____

Consultant Name: _____

Consultant Signature: _____

Date: _____

Appendix E
U.S. DOT FEDERAL REQUIREMENTS FOR PERSONAL SERVICES
CONTRACTS

XXV. DEFINITIONS

- N. **Approved Project Budget** means the most recent statement, approved by the U.S. DOT, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- O. **California Department of Transportation (Caltrans)** is an agency of the State of California and a direct recipient of grant funds from FHWA.
- P. **City** means the City and County of San Francisco, a municipal corporation, and its departments and agencies.
- Q. **Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from U.S. DOT.
- R. **Cooperative Agreement** means the instrument by which U.S. DOT awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which U.S. DOT takes an active role or retains substantial control.
- S. **Federal Highway Administration (FHWA)** is an operating administration of the U.S. DOT.
- T. **Federal Directive** includes any federal circular, notice, order or guidance providing information about DOT or FHWA programs, application processing procedures, and Project management guidelines.
- U. **Grant Agreement** means the instrument by which FHWA, acting through CalTrans, awards federal assistance to a specific Recipient to support a particular Project, and in which FHWA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- V. **Government** means the United States of America and any executive department or agency thereof.
- W. **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. For FHWA projects, the term "Project" means the task or set of tasks listed as described in the grant application and grant agreement between Caltrans and the Subrecipient.
- X. **Recipient** means any entity that receives federal assistance from U.S. DOT, FTA, FHWA or through CalTrans using DPT funds to accomplish the Project. For the purpose of this Agreement, Recipient is the City.
- Y. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- Z. **Subrecipient** means the San Francisco Municipal Transportation Agency, an agency of the City and County of San Francisco, which receives Federal assistance through Caltrans.

- AA. **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 U.S. DOT.
- BB. **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 U.S. DOT.
- CC. **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

XXVI. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in any grant agreement for work under this Agreement, 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.

XXVII. ACCESS TO RECORDS

- D. The Contractor agrees to provide the City and County of San Francisco, the U.S. DOT Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- E. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- F. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the U.S. DOT 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).

XXVIII. DEBARMENT AND SUSPENSION

The City is prohibited from making any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." By submitting a Proposal, and separately by executing this Agreement, Contractor certifies that it is not debarred or otherwise prohibited from bidding on, proposing for, and entering into this Agreement.

This is a material representation of fact by Contractor that City will rely upon in determining Contractor's responsibility and eligibility for award of the Agreement. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR Parts 180, Subpart C and 1200, Subpart C while its Proposal is valid and throughout the term of this Agreement and any other contract

with the City. Contractor shall a provision requiring compliance with those authorities and this Section in its subcontracts and other lower tier covered transactions.

I. COST PRINCIPLES

- A. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to City.
- D. All reimbursements to Contractor will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

XXIX. TRAVEL AND PER DIEM PAYMENTS

Reimbursements to Contractor and its subcontractors for travel and subsistence (per diem) expenses shall not exceed rates authorized to be paid rank and file California State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by Contractor are in excess of DPA rates, Contractor is responsible for the cost difference, and any overpayments inadvertently paid by City shall be reimbursed to City by Contractor on demand within 30 days of invoice.

XXX. ACCOUNTING SYSTEM

Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs by line item for the Project. The accounting system of shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by City.

XXXI. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor; to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or violation of this warranty, the SFMTA shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

XXXII. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

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

XXXIII. CIVIL RIGHTS

- C. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements U.S. DOT may issue.
- D. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:
 - 4. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements U.S. DOT may issue.
 - 5. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements U.S. DOT may issue.
 - 6. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply

with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements U.S. DOT may issue.

- D. **Flowdown to Subcontractors.** The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by U.S. DOT, modified only if necessary to identify the affected parties.
- E. **Contract Assurance.** The Contractor and its subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or its subcontractors 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.

XXXIV. CIVIL RIGHTS – STATE

- A. In the performance of this Agreement, Contractor and its subcontractors shall not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its subcontractors shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. 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. Contractor and its subcontractors shall post in conspicuous places, available to employees for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment section.
- B. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.
- C. Contractor shall include the above provisions in all subcontractors to perform work under this Agreement.

XXXV. DBE/SBE ASSURANCES

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

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

Contractor or Subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

XXXVI. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by the U.S. DOT*)

- D. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the U.S. DOT.
- E. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through U.S. DOT, 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.
- F. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.

XXXVII. RIGHTS IN DATA AND COPYRIGHTS (*Applicable to contracts for planning, research, or development financed by U.S. DOT*)

- C. **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.
- D. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
 - 8. **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.
 - 9. **Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for

the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

- c. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
- d. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by U.S. DOT.

10. **U.S. DOT Intention.** When U.S. DOT awards Federal assistance for an experimental, research or developmental work, it is U.S. DOT'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 U.S. DOT determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit U.S. DOT to make available to the public, either U.S. DOT's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

11. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

12. **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.

13. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

14. **Application to Subcontractors.** Unless U.S. DOT determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.

E. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.

- F. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through U.S. DOT, 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.

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

- E. **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.
- F. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- G. **Withholding for unpaid wages and liquidated damages** - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- H. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

XXXIX. ENERGY CONSERVATION REQUIREMENTS

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

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

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

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

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

XLII. PRIVACY

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XLV. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

- D. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has

made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the U.S. DOT-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- E. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by U.S. DOT under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- F. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by U.S. DOT. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XLVI. FLY AMERICA

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

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

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

XLVIII. SAFETY

- A. Consultant shall comply with California OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by SFMTA's Safety Officer and other SFMTA representatives.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

XLIX. 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.

L. 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.

LI. INCORPORATION OF DOT 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 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause the City to be in violation of the DOT terms and conditions.

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

**Agreement between the City and County of San Francisco
and
Kittelson & Associates, Inc.**

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

**Agreement between the City and County of San Francisco
and
Kittelson & Associates, Inc.
Contract No. SFMTA 2016-03/1**

This Agreement is made this _____ day of _____, 20__, in the City and County of San Francisco, State of California, by and between Kittelson & Associates, Inc., 155 Grand Ave. Suite 900, Oakland, CA 94612 (“Contractor”) and City.

Recitals

- A** The SFMTA wishes to contract with a qualified firm to provide services for As Needed Environmental Analysis, Transportation Analysis, and Documentation.
The Contractor must be able to provide broad range of services to complete task orders issued by the SFMTA.
- B** The SFMTA issued a Request for Proposals (RFP) on October 14, 2015, and selected Contractor as one of two highest qualified scorer pursuant to the RFP.
- C** The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 25 %.
- D** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- E** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 42016-15/16 on November 16, 2015.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

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

1.3 Award: Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute the Contract with the selected proposer.

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

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

1.6 CMD. The Contract Monitoring Division of the City.

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

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

1.9 Contractor or Consultant: Kittelson & Associates, Inc.

1.10 Controller: Controller of the City.

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

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

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

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

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

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

1.17 Mandatory City Requirements: Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.

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

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

1.20 Project Manager: The designated SFMTA employee who will assume all duties and responsibilities to manage the Contract.

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

1.22 Request for Proposals; RFP: The Request for Proposals for As-Needed Engineering Services issued by the SFMTA on October 14, 2015.

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

1.24 San Francisco Municipal Transportation Agency (the SFMTA or Agency): The agency of the City that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the former Department of Parking and Traffic, with exclusive authority over contracting, leasing and purchasing by the Agency.

1.25 Services: The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

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

1.27 Task Order: A written directive from the SFMTA to the Consultant to perform specified work.

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the latter of: (i) _____2016; or (ii) the Effective Date, and expire on _____, 2018, unless earlier terminated as otherwise provided herein.

2.2 The City has three options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

Article 3 Financial Matters

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

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

3.2 Guaranteed Maximum Costs. The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable

Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment Amount. Compensation under this Agreement shall be based on a negotiated lump sum price per task or subtask. In no event shall the amount of this Agreement exceed two million seven hundred ninety-seven thousand seven hundred sixty-seven dollars (\$2,797,767).

3.3.2 Method of Computing Compensation.

(a) **Hourly Rates.** The hourly rates in Appendix B shall be fixed at that level until 24 months after effective date of this Agreement. The hourly rates are "fully burdened," including all indirect/overhead costs and services such as reproduction, administrative staff assistance, etc. Hourly rates in Appendix B may be adjusted 24 months after the effective date of this Agreement. No hourly rate may be increased without prior written approval of the SFMTA.

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

(c) **Out-of-Pocket Expenses.** The SFMTA will reimburse Consultant for the actual cost of approve out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses are to be pre-approved by the SFMTA and Consultant must obtain the best air fare available in a timely fashion. All travel receipts must accompany the invoice.

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

per-mile basis for travel within a 100-mile radius of the City will not be reimbursable.

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

3.4 Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the SFMTA's designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the City be liable for interest or late charges for any late payments.

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

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

3.4.3 Invoice Format. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller and must include the Contract Progress Payment Authorization number. The Consultant shall submit invoices for all allowable charges incurred in the performance of the Agreement. No invoice shall be rendered if the total work done under this Agreement since the last invoice amounts to less than \$1,500, except that an invoice may be submitted if three months have elapsed since the last invoice was submitted. No more than one invoice shall be submitted in a month. The Consultant shall submit invoices in quadruplicate with each invoice containing the following information:

- (a) Contract Number
- (b) Task Order Number
- (c) Description of the work performed or services rendered
- (d) Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced
- (e) Subconsultant costs supported by invoice itemization in the same format as described here
- (f) Total costs

3.4.4 LBE Payment. Contractor must submit all required CMD payment forms to enable CCO to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment forms. Failure to submit all required CMD payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required CMD payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a CMD Form 9 Payment Affidavit verifying its payments to LBE subcontractors.

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

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

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

3.5 Reserved (Grant-Funded Contracts)

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

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

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement." The Contractor shall provide high quality submittals that will require minimal revisions by SFMTA and, when applicable, be fully consistent with the City's technical review process. Contractor shall adhere to the quality assurance guidelines set forth in Appendix D, "SFMTA Consultant Checklist for Document Submittals," and respond fully and promptly to requests for revisions to initial submittals from the City in order to finalize documents.

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

4.3 Information and Data. The Consultant shall request in writing any information and data it will require to prepare a proposal, or perform work described in the Task Order. The Consultant shall identify the timing and priority for which this information and data will be required. The Consultant and City shall reach agreement as to the availability and delivery time for this information and data during initial task negotiations.

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

4.5 Task Requirements. The SFMTA will define Task requirements. The scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required LBE forms, and the Consultant Proposal must be incorporated into the overhead rate (as approved in Appendix B) or in the project management line item. Additionally, project management costs may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, a task monitoring system (e.g., bi-weekly project reports or monthly status updates). Consultant time spent managing or overseeing work performed by subconsultants will not be compensable.

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

4.5.2 Consultant Proposal. The Consultant shall prepare and submit a proposal for the task showing:

(a) A work plan that includes a detailed description by subtask or deliverable of the work to be performed and the means and methods that will be used to perform it;

(b) A schedule by task and deliverable, including key milestones and/or critical path deliverables;

(c) Personnel and the Subconsultants (in accordance with Appendix B) assigned to each part of the work along with a resume or curriculum vitae that indicates why such personnel are qualified to perform the work; and prior experience in performing work of this nature;

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

(i) Estimated hours and hourly rates by position including overhead and profit as listed in Appendix B for both Consultant and Subconsultant personnel. Labor hours for preparing monthly invoices or filling out required LBE forms will not be allowed. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

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

(iii) Proposed profit as follows: Total profit/mark up of each Task Order as fixed fee amount not to exceed seven percent of total amount of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Consultant, Subconsultant(s) or combination thereof.

4.5.3 Negotiation of Cost. The City will review the proposal and negotiate a lump sum price to perform the work of each task, subtask and/or deliverable and a total cost not to exceed for the task.

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

4.5.5 Record of Negotiations. The City will document the negotiations and any agreement in a Record of Negotiations.

4.5.6 Controller Certification. The City will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

4.5.7 Notice to Proceed. After certification, the City will send to the Consultant a written NTP and Task Order number. The Consultant shall use the Task Order number when submitting invoices to the City for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.

4.5.8 Changes. Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of work of the task(s). If there is a material change in the scope of work of a task, then a proposal, negotiations, and Record of Negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes

that result in an increase to the total cost of a task.

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

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

Tim Erney – Program Manager

Laurence Lewis – Deputy Program Manager

Erin Efner – Environmental Discipline Leader

Erin Ferguson – Transportation Planning Discipline Leader

Sandra Lennie – Data Analytics Discipline Leader

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

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

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

4.9 Reserved (Reproduction of Work Product).

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

If Consultant considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Program Management/Implementation Plan, the Consultant shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.7 above.

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

ICF International

Iteris

Baymetrics

Traffic Research & Analysis, Inc.

Fall Line Analytics

Panorama Environmental, Inc.

Seifel Consulting
Adavant Consulting
Geotechnical Consultants, Inc.
Alfred Williams Consultancy, LLC
VerPlanck Historic Preservation Consulting
PreVision Design

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

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

action.

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

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

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

Article 5 Insurance and Indemnity

5.1 Insurance.

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

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

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property

Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

(d) Professional liability insurance, applicable to Contractor’s profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement; and

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

4. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or personal information or other personally identifying information, stored or transmitted in electronic form;
5. Network security liability arising from the unauthorized access to, use of, or tampering with, computers or computer systems, including hacker attacks; and
6. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City’s or third person’s computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

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

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

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

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

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

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

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

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

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

5.3 Indemnification.

For the purpose of this Agreement, Section 5.2.a will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by unlicensed service providers, and Section 5.2.b will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by licensed design professionals or a combination of licensed design professionals and unlicensed service providers.

(a) Unlicensed Service Providers. For any claim or action arising

from Services performed by Contractor or any subconsultant for which the relevant Task Order and California law does not require the person performing the Services hold a professional license, Contractor shall indemnify and defend the City as provided in this Section 5.2.a.

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

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

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

(b) Licensed Design Professionals. For any claim or action arising from Services performed by Contractor or any subconsultant for which the relevant Task Order and California law requires the person performing the Services hold a professional license (including but not limited to work that must be performed by a licensed professional engineer, architect, or traffic engineer), Contractor shall indemnify and defend the City as provided in this Section 5.2.b.

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

Article 6 Liability of the Parties

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

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

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

Article 7 Payment of Taxes

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

7.4 Contractor acknowledges that this Agreement may create a "possessory interest"

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

7.4.1 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.

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

7.4.3 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.

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

- (a) Halting the performance of all Services under this Agreement on

the date(s) and in the manner specified by SFMTA.

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

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

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

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

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

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

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

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

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

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

8.4.6 In no event shall SFMTA be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by SFMTA, except for those costs

specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

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

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

8.5 Termination for Default; Remedies.

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

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

3.7	Submitting False Claims.
4.13	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.4	Nondisclosure of Private, Proprietary or Confidential Information
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws

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

(c) Contractor (i) is generally not paying its debts as they become due; (vi)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; (vii)makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

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

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

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

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

8.6 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:

3.4.1	Payment Limited to Satisfactory Services
3.6	Audit and Inspection of Records
3.7	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
10.4	Nondisclosure of Private, Proprietary or Confidential Information
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability

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

work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

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

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

Article 10 Additional Requirements Incorporated by Reference

10.20 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 www.sfgov.org under "Government."

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

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

10.23 Nondisclosure of Private, Proprietary or Confidential Information.

10.23.1If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M. For purposes of this Agreement, Private Information shall also include vehicle license plate information and other information that would allow individuals recorded in Contractor created videos to be identified.

10.23.2In the performance of Services, Contractor may have access to City’s proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

10.23.3Notwithstanding any provision in this Agreement, Contractor shall not deliver to City in any form or medium, nor shall it incorporate into any information, data, document, or work product to be delivered to City, any Private Information that Contractor may collect or use in performing the Services, or that may otherwise be in Contractor's possession or control, and none of such Private Information shall be a work for hire or belong to City.

10.24 Nondiscrimination Requirements

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

10.24.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in

the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.25 Local Business Enterprise and Non-Discrimination in Contracting

Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 25% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor’s LBE subcontracting commitments.

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

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

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

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

10.30 Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of

personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.31 Reserved. (Slavery Era Disclosure).

10.32 Reserved. (Working with Minors).

10.33 Consideration of Criminal History in Hiring and Employment Decisions

10.33.1 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>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. 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.

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

10.34 Reserved (Public Access to Nonprofit Records and Meetings).

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

10.36 Reserved. (Sugar-Sweetened Beverage Prohibition).

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

10.38 Reserved. (Preservative Treated Wood Products).

Article 11 General Provisions

11.14 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: Amber Vasché
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103
E-mail: amber.vasche@sfmta.com

To Contractor: Tim Erney, Principal
Kittelson and Associates
155 Grand Avenue, Suite 900
Oakland, California 94612
Email: terney@kittelson.com

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

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

11.16 Reserved. (Payment Card Industry (PCI) Requirements).

11.17 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.),

and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

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

11.19 Dispute Resolution Procedure.

11.19.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor’s claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

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

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

11.24 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.

11.25 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.

11.26 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor’s proposal dated October 23, 2015. The RFP and Contractor’s proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor’s proposal.

Article 12 MacBride Principles And Signature

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

Article 13 Large Vehicle Driver Safety Training Requirements

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

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

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

CITY	CONTRACTOR
<p>San Francisco Municipal Transportation Agency</p> <p>_____</p> <p>Edward D. Reiskin Director of Transportation</p> <p>San Francisco Municipal Transportation Agency Board of Directors Resolution No. _____ Adopted: _____ Attest:</p> <p>_____</p> <p>Secretary, SFMTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Rob Stone Deputy City Attorney</p>	<p>Kittelson & Associates, Inc.</p> <p>_____</p> <p>Tim Erney, Principal</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 95870</p>

Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Form
- D: Consultant Checklist for Document Submittals

Appendix A Scope of Services

Description of Services

Consultant agrees to perform the following Services pursuant to the terms and conditions of this agreement between Kittelson & Associates, Inc. and the SFMTA, exercising the same degree of care, skill, and diligence as is ordinarily possessed and exercised by professionals providing similar services, currently practicing, under similar circumstances.

From time-to-time, it could be necessary for the consultant staff to perform the work on-site at the SFMTA offices to perform day-to-day services (e.g., CAD work). In advance of this work occurring, SFMTA and Kittelson & Associates, Inc. will agree on the parameters of this work arrangement.

J. Environmental Analysis and Documentation Services (CEQA and NEPA)

The Consultant(s) shall be responsible for preparing CEQA and/or NEPA analysis in partnership with SFMTA environmental review staff and project managers and in consultation, or under the direction of, the Planning Department. The tasks shall include but not be limited to the following:

31. Initial consultation for determining the level of environmental review that would be required and overall environmental review approach.
32. Provide environmental review and analysis of proposed SFMTA projects and policies; prepare documents for compliance with CEQA, including, but not limited to, Exemptions, Initial Studies / Environmental Evaluation Checklist, Negative Declaration / Mitigated Negative Declaration, Draft and Final Environmental Impact Reports (EIR), Addendums, Supplemental and Subsequent EIRs, Mater EIRs and any other CEQA documents or portions thereof including the technical studies to support such documents.
33. Preparation of NEPA documents, such as but not limited to Categorical Exclusion memos/forms, Initial Studies, Environmental Assessments, Findings of No Significant Impacts, addenda or portions of aforementioned documents as well as documents necessary for Section 106 and 4(f) compliance and any other documents to support NEPA documentation.
34. Preparation or review of specialized studies in the following areas:
 - a. Architectural History / Cultural Landscapes/ Historic Architectural;
 - b. Archaeological;
 - c. Biological;
 - d. Geological;
 - e. Hazardous materials;

- f. Energy & Greenhouse Gas (GHG) emissions;
 - g. Water Quality;
 - h. Noise and vibration;
 - i. Aesthetics and Visual impacts;
 - j. Wind impacts;
 - k. Air Quality;
 - l. Transportation analyses for environmental review, including but not limited to preparing Transportation Impact Studies, Synchro analysis of traffic level of service impacts from transportation projects, Vehicle Miles Traveled analysis, safety analysis, traffic device warrants, parking occupancy and utilization analysis, assessment of project impacts on transit, pedestrian and bicycle travel, loading impacts, emergency vehicle access impacts and assessments of cumulative/future traffic impacts. Analyses will be consistent with SFMTA guidance and the SF Planning Department's Transportation Impact Analysis Guidelines for Environmental Review under the direction of the SF Planning Department;
 - m. Title VI and environmental justice;
 - n. Socioeconomics;
 - o. Conduct analysis to support sea level rise vulnerability assessment; and
 - p. Mitigation Monitoring and Reporting Programs.
35. Conducting or assisting with scoping sessions and other agency and public outreach meetings.
 36. Preparing analyses or memos on environmental strategy and procedures (e.g, best practices or typical practices regarding environmental review for SFMTA projects and programs).
 37. Coordination of comments and preparation of responses from CEQA responsible agencies, along with other public and private stakeholder on draft and final SFMTA environmental documents.
 38. Implementing and reporting on mitigation monitoring programs.
 39. Review of proposed changes to CEQA and/or NEPA and drafting comment memos in response to those changes.
 40. Other related tasks as may be necessary to complete CEQA and NEPA review, including but not limited to review of documents prepared by the Planning Department and/or other Lead Agencies.

K. Transportation Analysis and Engineering Services

The Consultant(s) shall be responsible for preparing transportation analysis and engineering services. The tasks shall include but not be limited to the following:

34. Propose and evaluate physical design improvements for complete streets projects, Parking related projects, and Parking and intermodal facilities such as transit hubs.

35. Recommend designs to improve traffic circulation patterns to reduce conflicts between transportation modes, including signalization, roadway design, and traffic.
36. Recommend and/or assess bicycle and pedestrian project designs in support of Vision Zero and Bicycle Strategy projects.
37. Drafting various design standards based on industry best practices.
38. Perform arterial, freeway, and other operational analysis using Highway Capacity Manual and related methodologies and software programs.
39. Conduct micro-simulation (e.g., Vissim) to review potential changes to the network, including but not limited to signals, signal progression, transit signal priority treatments, etc.
40. Conduct feasibility-level engineering studies.
41. Develop materials to convey transportation engineering analysis and recommendations to the general public through various written and visual media including but not limited to justifications, 3D renderings, maps and charts.
42. Perform intersection and roadway safety analysis using Highway Safety Manual and related methodologies.
43. Develop and perform project screening and prioritization.
44. Transportation Equity Analysis

L. Transportation Data Collection and Analytics

The Consultant(s) selected shall be responsible for data collection, analytics and presentation of findings. The tasks shall include but not be limited to the following:

37. Pedestrian, bicycle, and vehicle circulation and parking utilization surveys, turning movement and directional counts of multiple modes (including but not limited to speed surveys, tube counts, vehicle classification, video counts, manual counts, etc.). Counts may need to be coordinated across the city and include numerous locations. Data collection information will be in the format specified by the SFMTA, but must include, and is not limited to, the following information:
 - a. Date / Times;
 - b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
 - c. Name and contact information of consultant performing the count effort;
 - d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e. 30TH ST EB EAST OF GUERRERO)
 - ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e. LAGUNA CLAY PM);

- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
 - f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
 - g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.
38. Development, application, and analysis of surveys and market research of people using specific modes of travel to understand demographics, origins and destinations, trip making patterns, and other factors influencing travel mode choice. This could include intercept type surveys and license plate collection surveys.
 39. Research and analysis of transportation policies, including existing City and SFMTA-specific policies, and global and US/North American best practices. Outcomes to include recommendations for strategic policies.
 40. Conduct analysis of existing agency data and data from external vendors to identify and analyze travel markets, parking utilization and pricing, transit ridership, congestion metrics as well as other performance metrics.
 41. Conduct Cost/Benefit analysis for transportation related projects, including federal TIGER grant applications and conduct value capture analysis of benefits of major transit investments adjacent to new development.
 42. Provide support with development of grant proposals. Lead and/or support the development and implementation of revenue models and analysis for citywide variable-rate pricing related to parking; conduct nexus studies for rates and fees.
 43. Applying range of geospatial analysis techniques to available or developed geospatial data sets. Lead and/or support the development of geospatial data that depicts the transportation system or other relevant data.
 44. Conduct before and after studies for project implementation. This could include using tools such as Synchro or Vissim to measure modal performance.
 45. Synthesize data collected and results of analysis into well written and easily understood memorandums and/or reports, including providing well designed graphics that convey technical information.
 46. Support development of area-specific (e.g., neighborhood) parking management plans.
 47. Develop travel demand forecasting and volume projections for all modes.
 48. Develop web-based data collection/presentation tools.

Department Liaison

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

Appendix B
Calculations of Charges

Billing rates are applicable for all project types including efforts under Environmental Analysis & Documentation, Transportation Analysis & Engineering, and Transportation Data Collection & Analytics

Kittelson & Associates, Inc.
Prime Costs

	Average Wage Rate	Overhead 204.96%	Profit 10%	Year 1 & 2 Billing Rate
Principal Engineer/Planner	\$81.00	\$166.01	\$24.70	\$272.00
Associate Engineer/Planner	\$53.70	\$110.06	\$16.38	\$180.00
Senior Engineer/Planner	\$41.28	\$84.61	\$12.59	\$138.00
Engineer/Planner	\$36.18	\$74.15	\$11.03	\$121.00
Transportation Analyst	\$30.26	\$62.02	\$9.23	\$102.00
Graphic Artist	\$39.01	\$79.95	\$11.90	\$131.00
Senior Technician / CADD	\$36.56	\$74.94	\$11.15	\$123.00
Technician / CADD	\$26.62	\$54.56	\$8.12	\$89.00
Writer	\$28.29	\$57.97	\$8.63	\$95.00
Office Support	\$23.45	\$48.07	\$7.15	\$79.00

Shown above are weighted average category hourly billing rates escalated 2% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

Iteris, Inc.
Sub-Consultant Costs

	Average Wage Rate	Overhead 167.92%	Profit 10%	Year 1 & 2 Billing Rate
Associate VP/VP III	\$100.91	\$169.45	\$27.04	\$297.00
Associate VP/VP II	\$90.82	\$152.51	\$24.33	\$268.00
Senior II: Eng/Planner/Sys/Soft	\$88.80	\$149.11	\$23.79	\$262.00
Associate VP/VP I	\$80.72	\$135.55	\$21.63	\$238.00
Senior I: Eng/Planner/Sys/Soft	\$72.65	\$122.00	\$19.47	\$214.00
Eng/Planner/Sys/Soft	\$62.57	\$105.06	\$16.76	\$184.00
Associate II: Eng/Planner/Sys/Soft	\$52.47	\$88.11	\$14.06	\$155.00
Associate I: Eng/Planner/Sys/Soft	\$46.42	\$77.95	\$12.44	\$137.00
Assistant II: Eng/Planner/Sys/Soft	\$40.36	\$67.77	\$10.81	\$119.00
Assistant I: Eng/Planner/Sys/Soft	\$34.31	\$57.62	\$9.19	\$101.00

Shown above are average category hourly billing rates escalated 2% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

ICF Jones & Stokes
Sub-Consultant Costs

	Average Wage Rate	Overhead 164.32%	Profit 10%	Year 1 Billing Rate	Year 2 Billing Rate
Senior Project Director*	\$127.37	\$209.29	\$33.67	\$290.00	\$298.70
Project Director	\$88.27	\$145.05	\$23.33	\$256.65	\$264.35
Technical Director	\$80.85	\$132.85	\$21.37	\$235.07	\$242.13
Senior Technical Analyst	\$77.33	\$127.07	\$20.44	\$224.84	\$231.58
Managing Consultant	\$71.50	\$117.49	\$18.90	\$207.89	\$214.12
Senior Consultant III	\$66.50	\$109.27	\$17.58	\$193.35	\$199.15
Senior Consultant II	\$57.48	\$94.45	\$15.19	\$167.12	\$172.14
Senior Consultant I	\$52.50	\$86.27	\$13.88	\$152.64	\$157.22
Associate Consultant III	\$49.75	\$81.75	\$13.15	\$144.65	\$148.99
Associate Consultant II	\$44.90	\$73.78	\$11.87	\$130.55	\$134.46
Associate Consultant I	\$39.43	\$64.79	\$10.42	\$114.64	\$118.08
Assistant Consultant	\$35.97	\$59.11	\$9.51	\$104.58	\$107.72
Administrative Technician	\$24.25	\$39.85	\$6.41	\$70.51	\$72.62
Technician	\$23.00	\$37.79	\$6.08	\$66.87	\$68.88
Intern	\$18.00	\$29.58	\$4.76	\$52.34	\$53.91

*Represents a voluntary rate reduction.

Shown above are weighted average category hourly billing rates for the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Fall Line Analytics
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Principal / Researcher	\$200.00	\$206.00

As a sole proprietor and small business, only flat hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Panorama Environmental
Sub-Consultant Costs**

	Wage Rate Range	Overhead 178%	Profit 10%	Year 1 Billing Rate	Year 2 Billing Rate
Principal	\$77.00	\$137.06	\$21.41	\$235.47	\$242.53
Senior Manager	\$67.31	\$119.81	\$18.71	\$205.83	\$212.01
Senior Project Manager / Scientist IV	\$65.38	\$116.38	\$18.18	\$199.93	\$205.93
Project Manager / Scientist III	\$50.48	\$89.85	\$14.03	\$154.37	\$159.00
Environmental Scientist II / Staff II	\$36.06	\$64.19	\$10.02	\$110.27	\$113.58
Environmental Scientist I	\$31.25	\$55.63	\$8.69	\$95.56	\$98.43

	Wage Rate Range	Overhead 178%	Profit 10%	Year 1 Billing Rate	Year 2 Billing Rate
GIS Specialist	\$40.87	\$72.75	\$11.36	\$124.98	\$128.73
Graphic Specialist	\$41.00	\$72.98	\$11.40	\$125.38	\$129.14
Senior Biologist	\$50.00	\$89.00	\$13.90	\$152.90	\$157.49

Shown above are average category hourly billing rates for the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

Seifel Consulting Sub-Consultant Costs

	Year 1 Billing Rate	Year 2 Billing Rate
President	\$250.00	\$258.00
Senior Managing Consultant	\$195.00	\$201.00
Managing Consultant	\$175.00	\$180.00
Senior Consultant	\$150.00	\$155.00
Consultant	\$125.00	\$129.00
Analyst	\$115.00	\$118.00
Research Analyst	\$105.00	\$108.00
Administrative Support	\$80.00	\$82.00

As a small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Baymetrics
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Project Manager	\$233.00	\$240.00
Project Supervisor	\$218.00	\$224.00

As a small business, only flat hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

Costs for services such as Turning Movement Counts, Pedestrian & Bicycle Counts, Volume/Speed/Classification counts, etc. provided at the time of Task Assignment and Scope of Work.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Adavant Consulting
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Principal	\$210.00	\$216.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**VerPlanck Historic Preservation Consulting
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Principal	\$135.00	\$139.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**GeoTechnical Consultants, Inc.
Sub-Consultant Costs**

	Average Wage Rate	Overhead 160.90%	Profit 10%	Year 1 & 2 Billing Rate
Principal Geotechnical	\$100.00	\$160.90	\$26.09	\$287.00
Associate Geotechnical Engineer	\$70.00	\$112.63	\$18.26	\$201.00
Senior Engineer/Geologist	\$55.00	\$88.50	\$14.35	\$158.00
Project Engineer/Geologist	\$45.00	\$72.41	\$11.74	\$129.00

Shown above are weighted average category hourly billing rates escalated 2% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Alfred Williams Consultancy, LLC
Sub-Consultant Costs**

	Average Wage Rate	Overhead 101.82%	Profit 10%	Year 1 & 2 Billing Rate
Officer / Principal-in Charge	\$108.74	\$110.71	\$21.94	\$241.00
Project Manager	\$85.83	\$87.39	\$17.32	\$191.00

Shown above are hourly billing rates escalated 1.3% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two

year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**PreVision Graphics
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Principal / 3D Renderer	\$175.00	\$180.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Traffic Research & Analysis, Inc.
Sub-Consultant Costs**

	Wage Rate	Overhead 165%	Profit 10%	Year 1 & 2 Billing Rate
Senior Project Manager	\$48.84	\$80.58	\$12.94	\$142.00
Principal	\$42.08	\$69.42	\$11.15	\$123.00
Program Manager	\$40.80	\$67.32	\$10.81	\$119.00
Administrator	\$20.45	\$33.74	\$5.42	\$60.00
Field Technician	\$16.32	\$26.93	\$4.32	\$48.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial 12-month period of the contract. Billing rates will be negotiated for the second 12-month period, and, as needed, upon the City electing to extend the contract terms.

Costs for services such as Turning Movement Counts, Pedestrian & Bicycle Counts, Volume/Speed/Classification counts, etc. provided at the time of Task Assignment and Scope of Work.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Appendix C
Task Order Request Form**

San Francisco Municipal Transportation Agency

SFMTA-2016-03 (LOCAL)

Consultant Name: _____

TASK ORDER DESCRIPTION

Type of Request: <input type="checkbox"/> New Task Order- No. _____ PSC Balance as of this request: _____ <input type="checkbox"/> Modification - No. _____	Date Initiated: _____
LBE Goal (%): _____ (attach CCO approval memo) Total Budget Amount: \$ _____	
Index Code: _____ Amount: \$ _____	
Index Code: _____ Amount: \$ _____	
[Insert additional lines for budget and index codes as required]	
TASK TITLE	
BRIEF SUMMARY OF WORK TO BE PERFORMED	
SCHEDULE	
Start Date: _____ Estimated Completion Date: _____	
APPROVALS	
Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section]	
Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section]	
Approved _____ Date: _____ Tom Maguire Director of Sustainable Streets	

Appendix D
Consultant Checklist for Document Submittals

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)

Task Order Number: _____

Task Order Title: _____

This checklist must be filled in by the consultant and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

40. Document is edited for grammatical and typographical errors, clarity, and format.
41. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
42. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
43. All document sections, tables, figures, appendices, etc. are submitted.
44. Footnotes are on same page as the reference (no endnotes).
45. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
46. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
47. Data in tables and figures are cross-checked with text.
48. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
49. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
50. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
51. All document background reports are finalized and included with the submittal packet.
52. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Consultant at the Task Order level:
 - a. Date / Times;
 - b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
 - c. Name and contact information of consultant performing the count effort;
 - d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)

- ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e., LAGUNA CLAY PM);
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
- f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
- g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

Notes:

Firm Name: _____

Consultant Name: _____

Consultant Signature: _____

Date: _____

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

**Agreement between the City and County of San Francisco
and
Kittelson & Associates, Inc.**

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

**Agreement between the City and County of San Francisco
and
Kittelson & Associates, Inc.
Contract No. SFMTA 2016-11/1**

This Agreement is made this _____ day of _____, 20___, in the City and County of San Francisco, State of California, by and between Kittelson & Associates, Inc., 155 Grand Ave. Suite 900, Oakland, CA 94612 (“Contractor”) and City.

Recitals

- A** The SFMTA wishes to contract with a qualified firm to provide services for As Needed Environmental Analysis, Transportation Analysis, and Documentation.

The Contractor must be able to provide broad range of services to complete task orders issued by the SFMTA.
- B** The SFMTA issued a Request for Proposals (RFP) on December 2, 2015, and selected Contractor as one of two highest qualified scorer pursuant to the RFP.
- C** The Small Business Enterprise (SBE) subcontracting participation requirement for this Agreement is 25%.
- D** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- E** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 42016-15/16 on November 16, 2015.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

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

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

1.3 Award: Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute the Contract with the selected proposer.

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

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

1.6 CMD. The Contract Monitoring Division of the City.

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

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

1.9 Contractor or Consultant: Kittelson & Associates, Inc.

1.10 Controller: Controller of the City.

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

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

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

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

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

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

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

1.18 Mandatory City Requirements: Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.

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

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

1.21 Project Manager: The designated SFMTA employee who will assume all duties and responsibilities to manage the Contract.

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

1.23 Request for Proposals; RFP: The Request for Proposals for As-Needed Engineering Services issued by the SFMTA on December 2, 2015.

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

1.25 San Francisco Municipal Transportation Agency (the SFMTA or Agency): The agency of the City that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the former Department of Parking and Traffic, with exclusive authority over contracting, leasing and purchasing by the Agency.

1.26 Services: The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

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

1.28 Task Order: A written directive from the SFMTA to the Consultant to perform specified work.

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the latter of: (i) _____ 2016; or (ii) the Effective Date, and expire on _____, 2018, unless earlier terminated as otherwise provided herein.

2.2 The City has three options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

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

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

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

3.3 Compensation.

3.3.1 Payment Amount. Compensation under this Agreement shall be based on a negotiated lump sum price per task or subtask. In no event shall the amount of this Agreement exceed one million three hundred ninety-eight thousand eight hundred eighty-four dollars (\$1,398,884).

3.3.2 Method of Computing Compensation.

(a) **Hourly Rates.** The hourly rates in Appendix B shall be fixed at that level until 24 months after effective date of this Agreement. The hourly rates are "fully burdened," including all indirect/overhead costs and services such as reproduction, administrative staff assistance, etc. Hourly rates in Appendix B may be adjusted 24 months after the effective date of this Agreement. No hourly rate may be increased without prior written approval of the SFMTA.

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

(c) **Out-of-Pocket Expenses.** The SFMTA will reimburse Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses are to be pre-approved by the SFMTA and Consultant must obtain the best air fare available in a timely fashion. All travel receipts must accompany the invoice.

(d) **Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be

reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for the services of this Agreement. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable.

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

3.5 Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the SFMTA's designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the City be liable for interest or late charges for any late payments.

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

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

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

invoice shall be submitted in a month. The Consultant shall submit invoices in quadruplicate with each invoice containing the following information:

- (a) Contract Number
- (b) Task Order Number
- (c) Description of the work performed or services rendered
- (d) Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced
- (e) Subconsultant costs supported by invoice itemization in the same format as described here
- (f) Total costs

3.5.4 SBE Payment. Contractor must submit all required payment forms to enable CCO to monitor Contractor's compliance with the SBE subcontracting commitments in this Agreement. Contractor shall pay its SBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the SBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required payment forms. Failure to submit all required payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a required forms to verify its payments to SBE subcontractors.

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

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

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

3.6 Grant-Funded Contracts

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

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

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

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

Article 4 Services and Resources

4.15 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement." The Contractor shall provide high quality submittals that will require minimal revisions by SFMTA and, when applicable, be fully consistent with the City's technical review process. Contractor shall adhere to the quality assurance guidelines set forth in Appendix D, "SFMTA Consultant Checklist for Document Submittals," and respond fully and promptly to requests for revisions to initial submittals from the City in order to finalize documents.

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

4.17 Information and Data. The Consultant shall request in writing any information and data it will require to prepare a proposal, or perform work described in the Task Order. The Consultant shall identify the timing and priority for which this information and data will be required. The Consultant and City shall reach agreement as to the availability and delivery time for this information and data during initial task negotiations.

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

4.19 Task Requirements. The SFMTA will define Task requirements. The scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required LBE forms, and the Consultant Proposal must be incorporated into the overhead rate (as approved in Appendix B) or in the project management line item. Additionally, project management costs may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, a task monitoring system (e.g., bi-weekly project reports or monthly status updates). Consultant time spent managing or overseeing work performed by

subconsultants will not be compensable.

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

4.19.2 Consultant Proposal. The Consultant shall prepare and submit a proposal for the task showing:

(a) A work plan that includes a detailed description by subtask or deliverable of the work to be performed and the means and methods that will be used to perform it;

(b) A schedule by task and deliverable, including key milestones and/or critical path deliverables;

(c) Personnel and the Subconsultants (in accordance with Appendix B) assigned to each part of the work along with a resume or curriculum vitae that indicates why such personnel are qualified to perform the work; and prior experience in performing work of this nature;

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

(i) Estimated hours and hourly rates by position including overhead and profit as listed in Appendix B for both Consultant and Subconsultant personnel. Labor hours for preparing monthly invoices or filling out required LBE forms will not be allowed. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

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

(iii) Proposed profit as follows: Total profit/mark up of each Task Order as fixed fee amount not to exceed seven percent of total amount of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Consultant, Subconsultant(s) or combination thereof.

4.19.3 Negotiation of Cost. The City will review the proposal and negotiate a lump sum price to perform the work of each task, subtask and/or deliverable and a total cost not to exceed for the task.

4.19.4 Subcontracting Goals. The CCO will review the final negotiated Task Order scope and schedule to determine the LBE goal and issue a memo to file by CMD. Subcontracting goals assigned to each Task Order shall be tracked by the CCO as part of the

overall goal set forth in the Agreement.

4.19.5 Record of Negotiations. The City will document the negotiations and any agreement in a Record of Negotiations.

4.19.6 Controller Certification. The City will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

4.19.7 Notice to Proceed. After certification, the City will send to the Consultant a written NTP and Task Order number. The Consultant shall use the Task Order number when submitting invoices to the City for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.

4.19.8 Changes. Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of work of the task(s). If there is a material change in the scope of work of a task, then a proposal, negotiations, and Record of Negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

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

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

Tim Erney – Program Manager

Laurence Lewis – Deputy Program Manager

Erin Efner – Environmental Discipline Leader

Erin Ferguson – Transportation Planning Discipline Leader

Sandra Lennie – Data Analytics Discipline Leader

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

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

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

4.23 Reserved (Reproduction of Work Product).

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

If Consultant considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Program Management/Implementation Plan, the Consultant shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.7 above.

4.25 Subcontracting. Contractor may subcontract portions of the Services only upon

prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 “Additional Requirements Incorporated by Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City’s execution of this Agreement constitutes its approval of the subcontractors listed below:

- ICF International
- Iteris
- Baymetrics
- Traffic Research & Analysis, Inc.
- Fall Line Analytics
- Panorama Environmental, Inc.
- Seifel Consulting
- Adavant Consulting
- Geotechnical Consultants, Inc.
- Alfred Williams Consultancy, LLC
- VerPlanck Historic Preservation Consulting
- PreVision Design

4.26 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.26.1 Independent Contractor. For the purposes of this Article 4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local

law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

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

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

Article 5 Insurance and Indemnity

5.3 Insurance.

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

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

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement; and

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

4. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or personal information or other personally identifying information, stored or transmitted in electronic form;

5. Network security liability arising from the unauthorized access to, use of, or tampering with, computers or computer systems, including hacker attacks; and
6. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

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

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

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

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

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

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

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

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

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

5.4 Indemnification.

For the purpose of this Agreement, Section 5.2.a will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by unlicensed service providers, and Section 5.2.b will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by licensed design professionals or a combination of licensed design professionals and unlicensed service providers.

(a) Unlicensed Service Providers. For any claim or action arising from Services performed by Contractor or any subconsultant for which the relevant Task Order and California law does not require the person performing the Services hold a professional license, Contractor shall indemnify and defend the City as provided in this Section 5.2.a.

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

of investigating any claims against the City.

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

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

(b) Licensed Design Professionals. For any claim or action arising from Services performed by Contractor or any subconsultant for which the relevant Task Order and California law requires the person performing the Services hold a professional license (including but not limited to work that must be performed by a licensed professional engineer, architect, or traffic engineer), Contractor shall indemnify and defend the City as provided in this Section 5.2.b.

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

Article 6 Liability of the Parties

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

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

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

Article 7 Payment of Taxes

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

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

7.4.1 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.

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

7.4.3 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.

7.4.4 Contractor further agrees to provide such other information as may be

requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

- (a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by SFMTA.
- (b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- (c) At SFMTA's direction, assigning to SFMTA any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (d) Subject to SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (e) Completing performance of any Services that SFMTA designates to be completed prior to the date of termination specified by SFMTA.
- (f) Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which SFMTA has or may acquire an interest.

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

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

separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

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

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

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

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

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

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

8.5 Termination for Default; Remedies.

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

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

3.7	Submitting False Claims.
4.13	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.4	Nondisclosure of Private, Proprietary or Confidential Information
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws

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

(c) Contractor (i) is generally not paying its debts as they become due; (viii) 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; (ix) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

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

8.5.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of

incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

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

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

8.6 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:

3.4.1	Payment Limited to Satisfactory Services
3.5.1	Grant Funded Contracts - Disallowed
3.6	Audit and Inspection of Records
3.7	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results

9.2	Works for Hire
10.4	Nondisclosure of Private, Proprietary or Confidential Information
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability

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

Article 9 Rights In Deliverables

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

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

Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.20 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 www.sfgov.org under “Government.”

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

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

10.23 Nondisclosure of Private, Proprietary or Confidential Information.

10.23.1If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M. For purposes of this Agreement, Private Information shall also include vehicle license plate information and other information that would allow individuals recorded in Contractor created videos to be identified.

10.23.2In the performance of Services, Contractor may have access to City’s proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

10.23.3Notwithstanding any provision in this Agreement, Contractor shall not

deliver to City in any form or medium, nor shall it incorporate into any information, data, document, or work product to be delivered to City, any Private Information that Contractor may collect or use in performing the Services, or that may otherwise be in Contractor's possession or control, and none of such Private Information shall be a work for hire or belong to City.

10.24 Nondiscrimination Requirements

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

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

10.25 Small Business Enterprise Program.

10.25.1 General. The SFMTA is committed to a Small Business Enterprise Program (SBE Program) for the participation of SBEs in contracting opportunities. In addition, the Consultant must comply with all applicable federal regulations regarding SBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement. More information on federal SBE requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

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

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

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

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

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

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

10.30 Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial

officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.31 Reserved. (Slavery Era Disclosure).

10.32 Reserved. (Working with Minors).

10.33 Consideration of Criminal History in Hiring and Employment Decisions

10.33.1 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>. A partial listing of some of Contractor’s obligations under Chapter 12T is set forth in this Section. 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.

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

10.34 Reserved (Public Access to Nonprofit Records and Meetings).

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

10.36 Reserved. (Sugar-Sweetened Beverage Prohibition).

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

10.38 Reserved. (Preservative Treated Wood Products).

Article 11 General Provisions

11.14 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: Amber Vasché
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103
E-mail: amber.vasche@sfmta.com

To Contractor: Tim Erney, Principal
Kittelsohn and Associates
155 Grand Avenue, Suite 900
Oakland, California 94612
Email: terney@kittelsohn.com

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

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

11.16 Reserved. (Payment Card Industry (PCI) Requirements).

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

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

11.19 Dispute Resolution Procedure.

11.19.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

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

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

amended from time to time.

11.24 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.

11.25 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.

11.26 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated November 16, 2015. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 MacBride Principles And Signature

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

Article 13 Large Vehicle Driver Safety Training Requirements

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

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

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

CITY	CONTRACTOR
San Francisco Municipal Transportation Agency	Kittelson & Associates, Inc.
_____ Edward D. Reiskin Director of Transportation	_____ Tim Erney, Principal
San Francisco Municipal Transportation Agency Board of Directors Resolution No. _____ Adopted: _____ Attest:	<u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u>
_____ Secretary, SFMTA Board of Directors	By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.
Approved as to Form: Dennis J. Herrera City Attorney	City vendor number: 95870
By: _____ Rob Stone Deputy City Attorney	

Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Form
- D: Consultant Checklist for Document Submittals
- E: FTA Requirements for Personal Services Contracts
- F: SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY SBE REQUIREMENTS

Appendix A Scope of Services

Description of Services

Consultant agrees to perform the following Services pursuant to the terms and conditions of this agreement between Kittelson & Associates, Inc. and the SFMTA, exercising the same degree of care, skill, and diligence as is ordinarily possessed and exercised by professionals providing similar services, currently practicing, under similar circumstances.

From time-to-time, it could be necessary for the consultant staff to perform the work on-site at the SFMTA offices to perform day-to-day services (e.g., CAD work). In advance of this work occurring, SFMTA and Kittelson & Associates, Inc. will agree on the parameters of this work arrangement.

M. Environmental Analysis and Documentation Services (CEQA and NEPA)

The Consultant(s) shall be responsible for preparing CEQA and/or NEPA analysis in partnership with SFMTA environmental review staff and project managers and in consultation, or under the direction of, the Planning Department. The tasks shall include but not be limited to the following:

41. Initial consultation for determining the level of environmental review that would be required and overall environmental review approach.
42. Provide environmental review and analysis of proposed SFMTA projects and policies; prepare documents for compliance with CEQA, including, but not limited to, Exemptions, Initial Studies / Environmental Evaluation Checklist, Negative Declaration / Mitigated Negative Declaration, Draft and Final Environmental Impact Reports (EIR), Addendums, Supplemental and Subsequent EIRs, Mater EIRs and any other CEQA documents or portions thereof including the technical studies to support such documents.
43. Preparation of NEPA documents, such as but not limited to Categorical Exclusion memos/forms, Initial Studies, Environmental Assessments, Findings of No Significant Impacts, addenda or portions of aforementioned documents as well as documents necessary for Section 106 and 4(f) compliance and any other documents to support NEPA documentation.
44. Preparation or review of specialized studies in the following areas:
 - a. Architectural History / Cultural Landscapes/ Historic Architectural;
 - b. Archaeological;
 - c. Biological;
 - d. Geological;
 - e. Hazardous materials;

- f. Energy & Greenhouse Gas (GHG) emissions;
 - g. Water Quality;
 - h. Noise and vibration;
 - i. Aesthetics and Visual impacts;
 - j. Wind impacts;
 - k. Air Quality;
 - l. Transportation analyses for environmental review, including but not limited to preparing Transportation Impact Studies, Synchro analysis of traffic level of service impacts from transportation projects, Vehicle Miles Traveled analysis, safety analysis, traffic device warrants, parking occupancy and utilization analysis, assessment of project impacts on transit, pedestrian and bicycle travel, loading impacts, emergency vehicle access impacts and assessments of cumulative/future traffic impacts. Analyses will be consistent with SFMTA guidance and the SF Planning Department's Transportation Impact Analysis Guidelines for Environmental Review under the direction of the SF Planning Department;
 - m. Title VI and environmental justice;
 - n. Socioeconomics;
 - o. Conduct analysis to support sea level rise vulnerability assessment; and
 - p. Mitigation Monitoring and Reporting Programs.
45. Conducting or assisting with scoping sessions and other agency and public outreach meetings.
 46. Preparing analyses or memos on environmental strategy and procedures (e.g, best practices or typical practices regarding environmental review for SFMTA projects and programs).
 47. Coordination of comments and preparation of responses from CEQA responsible agencies, along with other public and private stakeholder on draft and final SFMTA environmental documents.
 48. Implementing and reporting on mitigation monitoring programs.
 49. Review of proposed changes to CEQA and/or NEPA and drafting comment memos in response to those changes.
 50. Other related tasks as may be necessary to complete CEQA and NEPA review, including but not limited to review of documents prepared by the Planning Department and/or other Lead Agencies.

N. Transportation Analysis and Engineering Services

The Consultant(s) shall be responsible for preparing transportation analysis and engineering services. The tasks shall include but not be limited to the following:

45. Propose and evaluate physical design improvements for complete streets projects, Parking related projects, and Parking and intermodal facilities such as transit hubs.

46. Recommend designs to improve traffic circulation patterns to reduce conflicts between transportation modes, including signalization, roadway design, and traffic.
47. Recommend and/or assess bicycle and pedestrian project designs in support of Vision Zero and Bicycle Strategy projects.
48. Drafting various design standards based on industry best practices.
49. Perform arterial, freeway, and other operational analysis using Highway Capacity Manual and related methodologies and software programs.
50. Conduct micro-simulation (e.g., Vissim) to review potential changes to the network, including but not limited to signals, signal progression, transit signal priority treatments, etc.
51. Conduct feasibility-level engineering studies.
52. Develop materials to convey transportation engineering analysis and recommendations to the general public through various written and visual media including but not limited to justifications, 3D renderings, maps and charts.
53. Perform intersection and roadway safety analysis using Highway Safety Manual and related methodologies.
54. Develop and perform project screening and prioritization.
55. Transportation Equity Analysis

O. Transportation Data Collection and Analytics

The Consultant(s) selected shall be responsible for data collection, analytics and presentation of findings. The tasks shall include but not be limited to the following:

49. Pedestrian, bicycle, and vehicle circulation and parking utilization surveys, turning movement and directional counts of multiple modes (including but not limited to speed surveys, tube counts, vehicle classification, video counts, manual counts, etc.). Counts may need to be coordinated across the city and include numerous locations. Data collection information will be in the format specified by the SFMTA, but must include, and is not limited to, the following information:
 - a. Date / Times;
 - b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
 - c. Name and contact information of consultant performing the count effort;
 - d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e. 30TH ST EB EAST OF GUERRERO)
 - ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e. LAGUNA CLAY PM);

- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
 - f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
 - g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.
50. Development, application, and analysis of surveys and market research of people using specific modes of travel to understand demographics, origins and destinations, trip making patterns, and other factors influencing travel mode choice. This could include intercept type surveys and license plate collection surveys.
 51. Research and analysis of transportation policies, including existing City and SFMTA-specific policies, and global and US/North American best practices. Outcomes to include recommendations for strategic policies.
 52. Conduct analysis of existing agency data and data from external vendors to identify and analyze travel markets, parking utilization and pricing, transit ridership, congestion metrics as well as other performance metrics.
 53. Conduct Cost/Benefit analysis for transportation related projects, including federal TIGER grant applications and conduct value capture analysis of benefits of major transit investments adjacent to new development.
 54. Provide support with development of grant proposals. Lead and/or support the development and implementation of revenue models and analysis for citywide variable-rate pricing related to parking; conduct nexus studies for rates and fees.
 55. Applying range of geospatial analysis techniques to available or developed geospatial data sets. Lead and/or support the development of geospatial data that depicts the transportation system or other relevant data.
 56. Conduct before and after studies for project implementation. This could include using tools such as Synchro or Vissim to measure modal performance.
 57. Synthesize data collected and results of analysis into well written and easily understood memorandums and/or reports, including providing well designed graphics that convey technical information.
 58. Support development of area-specific (e.g., neighborhood) parking management plans.
 59. Develop travel demand forecasting and volume projections for all modes.
 60. Develop web-based data collection/presentation tools.

Department Liaison

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

**Appendix B
Calculations of Charges**

*Billing rates are applicable for all project types including efforts under
Environmental Analysis & Documentation, Transportation Analysis & Engineering,
and Transportation Data Collection & Analytics*

**Kittelson & Associates, Inc.
Prime Costs**

	Average Wage Rate	Overhead 204.96%	Profit 10%	Year 1 & 2 Billing Rate
Principal Engineer/Planner	\$81.00	\$166.01	\$24.70	\$272.00
Associate Engineer/Planner	\$53.70	\$110.06	\$16.38	\$180.00
Senior Engineer/Planner	\$41.28	\$84.61	\$12.59	\$138.00
Engineer/Planner	\$36.18	\$74.15	\$11.03	\$121.00
Transportation Analyst	\$30.26	\$62.02	\$9.23	\$102.00
Graphic Artist	\$39.01	\$79.95	\$11.90	\$131.00
Senior Technician / CADD	\$36.56	\$74.94	\$11.15	\$123.00
Technician / CADD	\$26.62	\$54.56	\$8.12	\$89.00
Writer	\$28.29	\$57.97	\$8.63	\$95.00
Office Support	\$23.45	\$48.07	\$7.15	\$79.00

Shown above are weighted average category hourly billing rates escalated 2% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

Iteris, Inc.
Sub-Consultant Costs

	Average Wage Rate	Overhead 167.92%	Profit 10%	Year 1 & 2 Billing Rate
Associate VP/VP III	\$100.91	\$169.45	\$27.04	\$297.00
Associate VP/VP II	\$90.82	\$152.51	\$24.33	\$268.00
Senior II: Eng/Planner/Sys/Soft	\$88.80	\$149.11	\$23.79	\$262.00
Associate VP/VP I	\$80.72	\$135.55	\$21.63	\$238.00
Senior I: Eng/Planner/Sys/Soft	\$72.65	\$122.00	\$19.47	\$214.00
Eng/Planner/Sys/Soft	\$62.57	\$105.06	\$16.76	\$184.00
Associate II: Eng/Planner/Sys/Soft	\$52.47	\$88.11	\$14.06	\$155.00
Associate I: Eng/Planner/Sys/Soft	\$46.42	\$77.95	\$12.44	\$137.00
Assistant II: Eng/Planner/Sys/Soft	\$40.36	\$67.77	\$10.81	\$119.00
Assistant I: Eng/Planner/Sys/Soft	\$34.31	\$57.62	\$9.19	\$101.00

Shown above are average category hourly billing rates escalated 2% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

ICF Jones & Stokes
Sub-Consultant Costs

	Average Wage Rate	Overhead 164.32%	Profit 10%	Year 1 Billing Rate	Year 2 Billing Rate
Senior Project Director*	\$127.37	\$209.29	\$33.67	\$290.00	\$298.70
Project Director	\$88.27	\$145.05	\$23.33	\$256.65	\$264.35
Technical Director	\$80.85	\$132.85	\$21.37	\$235.07	\$242.13
Senior Technical Analyst	\$77.33	\$127.07	\$20.44	\$224.84	\$231.58
Managing Consultant	\$71.50	\$117.49	\$18.90	\$207.89	\$214.12
Senior Consultant III	\$66.50	\$109.27	\$17.58	\$193.35	\$199.15
Senior Consultant II	\$57.48	\$94.45	\$15.19	\$167.12	\$172.14
Senior Consultant I	\$52.50	\$86.27	\$13.88	\$152.64	\$157.22
Associate Consultant III	\$49.75	\$81.75	\$13.15	\$144.65	\$148.99
Associate Consultant II	\$44.90	\$73.78	\$11.87	\$130.55	\$134.46
Associate Consultant I	\$39.43	\$64.79	\$10.42	\$114.64	\$118.08
Assistant Consultant	\$35.97	\$59.11	\$9.51	\$104.58	\$107.72
Administrative Technician	\$24.25	\$39.85	\$6.41	\$70.51	\$72.62
Technician	\$23.00	\$37.79	\$6.08	\$66.87	\$68.88
Intern	\$18.00	\$29.58	\$4.76	\$52.34	\$53.91

*Represents a voluntary rate reduction.

Shown above are weighted average category hourly billing rates for the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Fall Line Analytics
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Principal / Researcher	\$200.00	\$206.00

As a sole proprietor and small business, only flat hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Panorama Environmental
Sub-Consultant Costs**

	Wage Rate Range	Overhead 178%	Profit 10%	Year 1 Billing Rate	Year 2 Billing Rate
Principal	\$77.00	\$137.06	\$21.41	\$235.47	\$242.53
Senior Manager	\$67.31	\$119.81	\$18.71	\$205.83	\$212.01
Senior Project Manager / Scientist IV	\$65.38	\$116.38	\$18.18	\$199.93	\$205.93
Project Manager / Scientist III	\$50.48	\$89.85	\$14.03	\$154.37	\$159.00
Environmental Scientist II / Staff II	\$36.06	\$64.19	\$10.02	\$110.27	\$113.58
Environmental Scientist I	\$31.25	\$55.63	\$8.69	\$95.56	\$98.43

	Wage Rate Range	Overhead 178%	Profit 10%	Year 1 Billing Rate	Year 2 Billing Rate
GIS Specialist	\$40.87	\$72.75	\$11.36	\$124.98	\$128.73
Graphic Specialist	\$41.00	\$72.98	\$11.40	\$125.38	\$129.14
Senior Biologist	\$50.00	\$89.00	\$13.90	\$152.90	\$157.49

Shown above are average category hourly billing rates for the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

Seifel Consulting Sub-Consultant Costs

	Year 1 Billing Rate	Year 2 Billing Rate
President	\$250.00	\$258.00
Senior Managing Consultant	\$195.00	\$201.00
Managing Consultant	\$175.00	\$180.00
Senior Consultant	\$150.00	\$155.00
Consultant	\$125.00	\$129.00
Analyst	\$115.00	\$118.00
Research Analyst	\$105.00	\$108.00
Administrative Support	\$80.00	\$82.00

As a small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Baymetrics
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Project Manager	\$233.00	\$240.00
Project Supervisor	\$218.00	\$224.00

As a small business, only flat hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

Costs for services such as Turning Movement Counts, Pedestrian & Bicycle Counts, Volume/Speed/Classification counts, etc. provided at the time of Task Assignment and Scope of Work.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Adavant Consulting
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Principal	\$210.00	\$216.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**VerPlanck Historic Preservation Consulting
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Principal	\$135.00	\$139.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible

for reimbursement.

**GeoTechnical Consultants, Inc.
Sub-Consultant Costs**

	Average Wage Rate	Overhead 160.90%	Profit 10%	Year 1 & 2 Billing Rate
Principal Geotechnical	\$100.00	\$160.90	\$26.09	\$287.00
Associate Geotechnical Engineer	\$70.00	\$112.63	\$18.26	\$201.00
Senior Engineer/Geologist	\$55.00	\$88.50	\$14.35	\$158.00
Project Engineer/Geologist	\$45.00	\$72.41	\$11.74	\$129.00

Shown above are weighted average category hourly billing rates escalated 2% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Alfred Williams Consultancy, LLC
Sub-Consultant Costs**

	Average Wage Rate	Overhead 101.82%	Profit 10%	Year 1 & 2 Billing Rate
Officer / Principal-in Charge	\$108.74	\$110.71	\$21.94	\$241.00
Project Manager	\$85.83	\$87.39	\$17.32	\$191.00

Shown above are hourly billing rates escalated 1.3% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms

updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

PreVision Graphics Sub-Consultant Costs

	Year 1 Billing Rate	Year 2 Billing Rate
Principal / 3D Renderer	\$175.00	\$180.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

Traffic Research & Analysis, Inc. Sub-Consultant Costs

	Wage Rate	Overhead 165%	Profit 10%	Year 1 & 2 Billing Rate
Senior Project Manager	\$48.84	\$80.58	\$12.94	\$142.00
Principal	\$42.08	\$69.42	\$11.15	\$123.00
Program Manager	\$40.80	\$67.32	\$10.81	\$119.00
Administrator	\$20.45	\$33.74	\$5.42	\$60.00
Field Technician	\$16.32	\$26.93	\$4.32	\$48.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial 12-month period of the contract. Billing rates will be negotiated for the second 12-month period, and, as needed, upon the City electing to extend the contract terms.

Costs for services such as Turning Movement Counts, Pedestrian & Bicycle Counts, Volume/Speed/Classification counts, etc. provided at the time of Task Assignment and Scope of Work.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Appendix C
Task Order Request Form**

**San Francisco Municipal Transportation Agency
SFMTA-2016-11/1 (FTA)**

Consultant Name: _____

TASK ORDER DESCRIPTION

Type of Request: _____ Date Initiated: _____ <input type="checkbox"/> New Task Order- No. _____ PSC Balance as of this request: _____ <input type="checkbox"/> Modification - No. _____
SBE Goal (%): _____ (attach CCO approval memo) Total Budget Amount: \$ _____ Index Code: _____ Amount: \$ _____ Index Code: _____ Amount: \$ _____ [Insert additional lines for budget and index codes as required]
TASK TITLE
BRIEF SUMMARY OF WORK TO BE PERFORMED
SCHEDULE Start Date: _____ Estimated Completion Date: _____
APPROVALS Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section] Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section] Approved _____ Date: _____ Tom Maguire Director of Sustainable Streets

Appendix D
Consultant Checklist for Document Submittals

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)

Task Order Number: _____

Task Order Title: _____

This checklist must be filled in by the consultant and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

53. Document is edited for grammatical and typographical errors, clarity, and format.
54. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
55. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
56. All document sections, tables, figures, appendices, etc. are submitted.
57. Footnotes are on same page as the reference (no endnotes).
58. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
59. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
60. Data in tables and figures are cross-checked with text.
61. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
62. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
63. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
64. All document background reports are finalized and included with the submittal packet.
65. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Consultant at the Task Order level:

- a. Date / Times;
- b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
- c. Name and contact information of consultant performing the count effort;
- d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)
 - ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e., LAGUNA CLAY PM);
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
- f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
- g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

Notes:

Firm Name: _____

Consultant Name: _____

Consultant Signature: _____

Date: _____

Appendix E
FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

LII. DEFINITIONS

- DD. **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- EE. **Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.
- FF. **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.
- GG. **Federal Transit Administration (FTA)** is an operating administration of the U.S. DOT.
- HH. **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.
- II. **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.
- JJ. **Government** means the United States of America and any executive department or agency thereof.
- KK. **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.
- LL. **Recipient** means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.
- MM. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- NN. **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.
- OO. **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.
- PP. **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

LIII. FEDERAL CHANGES

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

LIV. ACCESS TO RECORDS

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

LV. DEBARMENT AND SUSPENSION

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

LVI. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

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

LVII. CIVIL RIGHTS

- E. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- F. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

7. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 8. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 9. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- F. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

LVIII. DBE/SBE ASSURANCES

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

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

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

- G. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of

America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

- H. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- I. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

- E. **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.
- F. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
 - 15. **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.
 - 16. **Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:
 - e. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
 - f. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.
 - 17. **FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is FTA's general intention to increase

transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

18. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
 19. **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.
 20. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
 21. **Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- G. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- H. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

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

- I. **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.
- J. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- K. **Withholding for unpaid wages and liquidated damages** - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- L. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

LXII. ENERGY CONSERVATION REQUIREMENTS

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

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

- E. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

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

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

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

LXV. PRIVACY

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

LXVI. 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.

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

LXIX. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

- G. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent

claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- H. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- I. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

LXX. FLY AMERICA

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

LXXI. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

LXXII. 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)*

- B. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - 1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract

and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.
3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

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

LXXIII. 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.

LXXIV. 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.

LXXV. 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.

Appendix F
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SBE REQUIREMENTS

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

I. POLICY

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

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

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

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

A. Applicability

Pursuant to 49 C.F.R. Sections 26.3 and 26.21, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement an SBE Program in accordance with the Regulations. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by DOT federal financial assistance.

B. Objectives

The objectives of this program are to:

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

C. Administration of Program

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

D. Prohibited Discrimination

SFMTA shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the basis of (the fact or perception of a person's) race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

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

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

II. DEFINITIONS

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

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

III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

B. SBE Participation Goal

A goal of 30 percent SBE participation has been established for this contract. This SBE goal will apply to the following types of contracts or scope of work in the contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

B. Determining the Amount of SBE Participation

The SFMTA strongly encourages the prime contractor to make every good faith effort to include SBEs to perform meaningful work in all aspects of the projects. To accomplish this goal, the following guidance is provided:

1. SBE Participation

SBE participation includes contracts (other than employee contracts) with SBEs for any goods or services specifically required for the completion of the work under the

Agreement. An SBE may participate as a prime contractor/consultant, subcontractor/consultant, joint venture partner with a prime or consultant, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement.

2. Function

An SBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work. However, an SBE may contract out a portion of the work if it is considered to be a normal industry practice. If an SBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE shall be presumed not to be performing a commercially useful function.

3. Determining the amount of SBE Participation

SBE participation includes that portion of the contract work actually performed by a certified SBE with its own forces. An SBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by the contract.

An SBE's participation can only be counted if it is performing a commercially useful function.. An SBE is performing a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE is not responsible for at least 30 percent of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function.

The Contractor shall determine the amount of SBE participation for each SBE performing work on the contract in terms of both the total value of the work in dollars and the percentage of the total contract bid price. The Contractor shall also determine the total amount of SBE participation for the entire contract. The Contractor shall count SBE participation according to the following guidelines:

f. SBE Prime Contractor

Count the entire dollar amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE participation by the SBE Prime Contractor.

g. SBE Subcontractor

Count the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Contractor) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE subcontractor to another firm as SBE participation by said SBE subcontractor. If the work has been subcontracted to another SBE, it will be counted as SBE participation by that other SBE.

h. SBE Joint Venture Partner

Count the portion of the work that is performed solely by the SBE's forces or if the work is not clearly delineated between the SBE and the joint venture partner, count the portion of the work equal to the SBE's percentage of ownership interest in the joint venture.

i. SBE Regular Dealer

Count 60 percent of the costs of materials and supplies obtained from an SBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business (except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business). This applies whether an SBE is a prime contractor or subcontractor.

j. Other SBEs

Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from an SBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

C. Submission of Certification for SBEs

All firms wishing to receive credit for participation under the SFMTA's SBE Program must be certified as bona fide SBEs with the SFMTA. This requires either submission of: (1) the completed certification applications for either SBEs, DBEs, or LBEs, or (2) submission of the SFMTA's small business verification application. For information regarding where to obtain applications for these certifications, please contact the SFMTA Contract Compliance Office at:

San Francisco Municipal Transportation Agency
Contract Compliance Office
One South Van Ness Avenue 6th floor
San Francisco, California 94103

(415) 701-4362
Attn: Sheila Evans-Peguese

D. Contract Assurances

The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The Contractor and its subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

E. Use of SBE Firms

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

F. Substitution of Subconsultants and Suppliers

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

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

G. Addition of Subconsultants and Suppliers

The Consultant shall notify CCO prior to any addition of an SBE or non-SBE subconsultant or supplier to the project. Submit SBE SFMTA Form No. 4 for each new SBE subconsultant or supplier. Any new SBE subconsultant or supplier approved by CCO also must submit SFMTA SBE Form No. 5.

H. Prompt Payment to Subcontractors

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

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

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

IV. MONITORING AND COMPLIANCE

A. SBE Records; Reporting Requirements

The Contractor shall maintain records of all SBE participation in the performance of the contract including subcontracts entered into with certified SBEs and all materials purchased from certified SBEs.

The Contractor shall submit SBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Contractor shall submit a final summary SBE report to the CCO.

B. Noncompliance; Administrative Remedies

SFMTA will implement appropriate mechanisms to ensure that its prime contractors and subcontractors comply with SBE Program regulatory requirements. SFMTA will apply legal and contractual remedies available under federal, state and local law.

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

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

**Agreement between the City and County of San Francisco
and
Kittelson & Associates, Inc.**

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

**Agreement between the City and County of San Francisco
and
Kittelson & Associates, Inc.
Contract No. SFMTA 2016-12/1**

This Agreement is made this _____ day of _____, 20__, in the City and County of San Francisco, State of California, by and between Kittelson & Associates, Inc., 155 Grand Ave. Suite 900, Oakland, CA 94612 (“Contractor”) and City.

Recitals

- A** The SFMTA wishes to contract with a qualified firm to provide services for As Needed Environmental Analysis, Transportation Analysis, and Documentation.
The Contractor must be able to provide broad range of services to complete task orders issued by the SFMTA.
- B** The SFMTA issued a Request for Proposals (RFP) on October 14, 2015, and selected Contractor as one of two highest qualified scorer pursuant to the RFP.
- C** The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 25 %.
- D** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- E** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 42016-15/16 on November 16, 2015.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

- 1.1 Acceptance:** The formal written acceptance by the City and County of San Francisco that all work, or a specific portion thereof, under the contract has been satisfactorily completed.
- 1.2 Agreement or Contract:** This Agreement and all referenced Appendices to this Agreement, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference.
- 1.3 Award:** Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute the Contract with the selected proposer.
- 1.4 Certification:** Certification by the Controller that funds necessary to make payments as required under the contract are available in accordance with the City's Charter.
- 1.5 City:** The City and County of San Francisco, a municipal corporation, acting by and through the SFMTA.
- 1.6 CMD.** The Contract Monitoring Division of the City.
- 1.7 Contract Compliance Office (CCO):** The SFMTA office that administers compliance with federal regulations governing the Disadvantaged Business Enterprises/Equal Employment and Non-Discrimination Programs, in addition to the SFMTA Small Business Enterprise Program and the City's Local Business Enterprise/Non-Discrimination Program.
- 1.8 Contract Modification or Amendment:** A written order, issued by the City to Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.
- 1.9 Contractor or Consultant:** Kittelson & Associates, Inc.
- 1.10 Controller:** Controller of the City.
- 1.11 Days:** Unless otherwise designated, the word "Days" refers to working days of the City, which are generally Monday through Friday, excluding holidays. The use of the term "days," "working days" or "business days" in this Agreement shall be synonymous.
- 1.12 Deliverables:** Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.
- 1.13 Director:** The Director of Transportation of the SFMTA or his/her designee.

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

1.15 Federal Highway Administration (FHWA): An operating administration of the U.S. Department of Transportation (DOT)

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

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

1.18 Mandatory City Requirements: Those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations on Contractor.

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

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

1.21 Project Manager: The designated SFMTA employee who will assume all duties and responsibilities to manage the Contract.

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

1.23 Request for Proposals; RFP: The Request for Proposals for As-Needed Engineering Services issued by the SFMTA on November 17, 2015.

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

1.25 San Francisco Municipal Transportation Agency (the SFMTA or Agency): The agency of the City that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the former Department of Parking and Traffic, with exclusive authority over contracting, leasing and purchasing by the Agency.

1.26 Services: The work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

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

1.28 Task Order: A written directive from the SFMTA to the Consultant to perform specified work.

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the latter of: (i) _____2016; or (ii) the Effective Date, and expire on _____, 2018, unless earlier terminated as otherwise provided herein.

2.2 The City has three options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

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

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

3.4 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor,

any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment Amount. Compensation under this Agreement shall be based on a negotiated lump sum price per task or subtask. In no event shall the amount of this Agreement exceed four hundred sixty-six thousand two hundred ninety-five dollars (\$466,295).

3.3.2 Method of Computing Compensation.

(a) **Hourly Rates.** The hourly rates in Appendix B shall be fixed at that level until 24 months after effective date of this Agreement. The hourly rates are "fully burdened," including all indirect/overhead costs and services such as reproduction, administrative staff assistance, etc. Hourly rates in Appendix B may be adjusted 24 months after the effective date of this Agreement. No hourly rate may be increased without prior written approval of the SFMTA.

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

(c) **Out-of-Pocket Expenses.** The SFMTA will reimburse Consultant for the actual cost of approve out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses are to be pre-approved by the SFMTA and Consultant must obtain the best air fare available in a timely fashion. All travel receipts must accompany the invoice.

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

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

3.5 Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the SFMTA's designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the City be liable for interest or late charges for any late payments.

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

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

3.7.3 Invoice Format. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller and must include the Contract Progress Payment Authorization number. The Consultant shall submit invoices for all allowable charges incurred in the performance of the Agreement. No invoice shall be rendered if the total work done under this Agreement since the last invoice amounts to less than \$1,500, except that an invoice may be submitted if three months have elapsed since the last invoice was submitted. No more than one invoice shall be submitted in a month. The Consultant shall submit invoices in quadruplicate with each invoice containing the following information:

- (a) Contract Number

- (b) Task Order Number
- (c) Description of the work performed or services rendered
- (d) Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced
- (e) Subconsultant costs supported by invoice itemization in the same format as described here
- (f) Total costs

3.7.4 DBE Payment. Contractor must submit all required payment forms to enable CCO to monitor Contractor's compliance with the DBE subcontracting commitments in this Agreement. Contractor shall pay its DBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the SBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required payment forms. Failure to submit all required payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a required forms to verify its payments to DBE subcontractors.

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

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

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

3.8 Grant-Funded Contracts

3.8.1 Disallowance. If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States

Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

3.8.2 FHWA Requirements. The provisions contained in "U.S. DOT Contract Requirements," attached to this Agreement as Appendix E, is incorporated into this Agreement. If there is any conflict between the FHWA terms and conditions and any other terms and conditions of this Agreement, the FHWA terms and conditions shall take precedence.

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

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

Article 4 Services and Resources

4.15 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers and employees of the City

are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement." The Contractor shall provide high quality submittals that will require minimal revisions by SFMTA and, when applicable, be fully consistent with the City's technical review process. Contractor shall adhere to the quality assurance guidelines set forth in Appendix D, "SFMTA Consultant Checklist for Document Submittals," and respond fully and promptly to requests for revisions to initial submittals from the City in order to finalize documents.

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

4.17 Information and Data. The Consultant shall request in writing any information and data it will require to prepare a proposal, or perform work described in the Task Order. The Consultant shall identify the timing and priority for which this information and data will be required. The Consultant and City shall reach agreement as to the availability and delivery time for this information and data during initial task negotiations.

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

4.19 Task Requirements. The SFMTA will define Task requirements. The scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required LBE forms, and the Consultant Proposal must be incorporated into the overhead rate (as approved in Appendix B) or in the project management line item. Additionally, project management costs may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, a task monitoring system (e.g., bi-weekly project reports or monthly status updates). Consultant time spent managing or overseeing work performed by subconsultants will not be compensable.

4.19.1 Scope of Work. The SFMTA will prepare the scope of work and expected time of completion, using the Task Order Request form (Appendix C) and transmit

the Task Order Request form to the Consultant with a request for a proposal for the performance of the task by the established deadline. The City may, at their sole discretion, choose to exclude proposals not received by the established deadline. Proposals must include, but not limited to, the following information:

4.19.2 Consultant Proposal. The Consultant shall prepare and submit a proposal for the task showing:

(a) A work plan that includes a detailed description by subtask or deliverable of the work to be performed and the means and methods that will be used to perform it;

(b) A schedule by task and deliverable, including key milestones and/or critical path deliverables;

(c) Personnel and the Subconsultants (in accordance with Appendix B) assigned to each part of the work along with a resume or curriculum vitae that indicates why such personnel are qualified to perform the work; and prior experience in performing work of this nature;

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

(i) Estimated hours and hourly rates by position including overhead and profit as listed in Appendix B for both Consultant and Subconsultant personnel. Labor hours for preparing monthly invoices or filling out required LBE forms will not be allowed. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

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

(iii) Proposed profit as follows: Total profit/mark up of each Task Order as fixed fee amount not to exceed seven percent of total amount of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Consultant, Subconsultant(s) or combination thereof.

4.19.3 Negotiation of Cost. The City will review the proposal and negotiate a lump sum price to perform the work of each task, subtask and/or deliverable and a total cost not to exceed for the task.

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

4.19.5 Record of Negotiations. The City will document the negotiations and any agreement in a Record of Negotiations.

4.19.6 Controller Certification. The City will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

4.19.7 Notice to Proceed. After certification, the City will send to the Consultant a written NTP and Task Order number. The Consultant shall use the Task Order number when submitting invoices to the City for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.

4.19.8 Changes. Agreed cost for Task Orders cannot be modified unless there is a material change in the scope of work of the task(s). If there is a material change in the scope of work of a task, then a proposal, negotiations, and Record of Negotiations shall be required before changes to agreed cost can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

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

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

Tim Erney – Program Manager

Laurence Lewis – Deputy Program Manager

Erin Efner – Environmental Discipline Leader

Erin Ferguson – Transportation Planning Discipline Leader

Sandra Lennie – Data Analytics Discipline Leader

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

deviations.

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

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

4.23 Reserved (Reproduction of Work Product).

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

If Consultant considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Program Management/Implementation Plan, the Consultant shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5.7 above.

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

void. City's execution of this Agreement constitutes its approval of the subcontractors listed below:

ICF International
Iteris
Baymetrics
Traffic Research & Analysis, Inc.
Fall Line Analytics
Panorama Environmental, Inc.
Seifel Consulting
Adavant Consulting
Geotechnical Consultants, Inc.
Alfred Williams Consultancy, LLC
VerPlanck Historic Preservation Consulting
PreVision Design

4.26 Independent Contractor; Payment of Employment Taxes and Other Expenses.

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

shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

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

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

appropriate for the purposes contemplated in this Agreement.

Article 5 Insurance and Indemnity

5.3 Insurance.

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

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

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement; and

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

4. Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or personal information or other personally identifying information, stored or transmitted in electronic form;
5. Network security liability arising from the unauthorized access to, use of, or tampering with, computers or computer systems, including hacker attacks; and
6. Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

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

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

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

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

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

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

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

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

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

5.4 Indemnification.

For the purpose of this Agreement, Section 5.2.a will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by unlicensed service providers, and Section 5.2.b will apply for Services performed under Task Orders in which the SFMTA directs the Services shall be performed only by licensed design professionals or a combination of licensed design professionals and unlicensed service providers.

(a) Unlicensed Service Providers. For any claim or action arising from Services performed by Contractor or any subconsultant for which the relevant Task Order and California law does not require the person performing the Services hold a professional license, Contractor shall indemnify and defend the City as provided in this Section 5.2.a.

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

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

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the

patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

(b) Licensed Design Professionals. For any claim or action arising from Services performed by Contractor or any subconsultant for which the relevant Task Order and California law requires the person performing the Services hold a professional license (including but not limited to work that must be performed by a licensed professional engineer, architect, or traffic engineer), Contractor shall indemnify and defend the City as provided in this Section 5.2.b.

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

Article 6 Liability of the Parties

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

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

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

Article 7 Payment of Taxes

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

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

7.4.1 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.

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

7.4.3 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.

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

the date on which termination shall become effective.

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

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

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

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

(d) Subject to SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that SFMTA designates to be completed prior to the date of termination specified by SFMTA.

(f) Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which SFMTA has or may acquire an interest.

8.4.5 Within 30 days after the specified termination date, Contractor shall submit to SFMTA an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed

by the SFMTA.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to SFMTA, and any other appropriate credits to SFMTA against the cost of the Services or other work.

8.4.6 In no event shall SFMTA be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.4.7 In arriving at the amount due to Contractor under this Section, SFMTA may deduct: (i) all payments previously made by SFMTA for Services covered by Contractor's final invoice; (ii) any amount due from Contractor to claim which SFMTA in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.4.8 SFMTA's payment obligation under this Section shall survive termination of this Agreement.

8.5 Termination for Default; Remedies.

8.5.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.7	Submitting False Claims.
4.13	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.4	Nondisclosure of Private, Proprietary or Confidential Information

10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.5.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be

deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.6 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:

3.4.1	Payment Limited to Satisfactory Services
3.5.1	Grant Funded Contracts - Disallowed
3.6	Audit and Inspection of Records
3.7	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
10.4	Nondisclosure of Private, Proprietary or Confidential Information
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws

11.11	Severability
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8.7.2 Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

9.3 Ownership of Results. Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.4 Works for Hire. If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor’s copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City’s prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.20 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 www.sfgov.org under “Government.”

10.21 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.22 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.23 Nondisclosure of Private, Proprietary or Confidential Information.

10.23.1 If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M. For purposes of this Agreement, Private Information shall also include vehicle license plate information and other information that would allow individuals recorded in Contractor created videos to be identified.

10.23.2 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

10.23.3 Notwithstanding any provision in this Agreement, Contractor shall not deliver to City in any form or medium, nor shall it incorporate into any information, data, document, or work product to be delivered to City, any Private Information that Contractor may collect or use in performing the Services, or that may otherwise be in Contractor's possession or control, and none of such Private Information shall be a work for hire or belong to City.

10.24 Nondiscrimination Requirements

10.24.1 Non Discrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply

with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.24.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.25 Disadvantaged Business Enterprise Program.

10.25.1 General. The SFMTA is committed to a Disadvantaged Business Enterprise Program (DBE Program) for the participation of DBEs in contracting opportunities. In addition, the Consultant must comply with all applicable federal regulations regarding DBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to DBEs performing work under this Agreement. More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

10.25.2 Compliance with DBE Program. Consultant shall comply with the DBE provisions contained in Appendix E attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the DBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Consultant to comply with any of these requirements shall be deemed a material breach of this Agreement.

10.25.3 Non-Discrimination in Hiring. Pursuant to City and SFMTA policy, Consultant is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure non-discrimination in Consultant's employment practices.

10.26 Minimum Compensation Ordinance. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.27 Health Care Accountability Ordinance. Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

10.28 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.29 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.30 Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.31 Reserved. (Slavery Era Disclosure).

10.32 Reserved. (Working with Minors).

10.33 Consideration of Criminal History in Hiring and Employment Decisions

10.33.1 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>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. 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.

10.33.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.34 Reserved (Public Access to Nonprofit Records and Meetings).

10.35 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.36 Reserved. (Sugar-Sweetened Beverage Prohibition).

10.37 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.38 Reserved. (Preservative Treated Wood Products).

Article 11 General Provisions

11.14 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: Amber Vasché
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103
E-mail: amber.vasche@sfmta.com

To Contractor: Tim Erney, Principal
Kittelson and Associates
155 Grand Avenue, Suite 900
Oakland, California 94612
Email: terney@kittelson.com

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.15 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.16 Reserved. (Payment Card Industry (PCI) Requirements).

11.17 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.18 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.19 Dispute Resolution Procedure.

11.19.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager

a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.19.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.20 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.21 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.22 Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.23 Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.24 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.

11.25 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.

11.26 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated November 17, 2015. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 MacBride Principles And Signature

12.1 MacBride Principles -Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

Article 13 Large Vehicle Driver Safety Training Requirements

13.3 Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

13.4 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the

time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY	CONTRACTOR
<p>San Francisco Municipal Transportation Agency</p> <p>_____</p> <p>Edward D. Reiskin Director of Transportation</p> <p>San Francisco Municipal Transportation Agency Board of Directors Resolution No. _____ Adopted: _____ Attest:</p> <p>_____</p> <p>Secretary, SFMTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Rob Stone Deputy City Attorney</p>	<p>Kittelson & Associates, Inc.</p> <p>_____</p> <p>Tim Erney, Principal</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 95870</p>

Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Form
- D: Consultant Checklist for Document Submittals
- E: FHWA Requirements for Personal Services Contracts

Appendix A Scope of Services

Description of Services

Consultant agrees to perform the following Services pursuant to the terms and conditions of this agreement between Kittelson & Associates, Inc. and the SFMTA, exercising the same degree of care, skill, and diligence as is ordinarily possessed and exercised by professionals providing similar services, currently practicing, under similar circumstances.

From time-to-time, it could be necessary for the consultant staff to perform the work on-site at the SFMTA offices to perform day-to-day services (e.g., CAD work). In advance of this work occurring, SFMTA and Kittelson & Associates, Inc. will agree on the parameters of this work arrangement.

P. Environmental Analysis and Documentation Services (CEQA and NEPA)

The Consultant(s) shall be responsible for preparing CEQA and/or NEPA analysis in partnership with SFMTA environmental review staff and project managers and in consultation, or under the direction of, the Planning Department. The tasks shall include but not be limited to the following:

51. Initial consultation for determining the level of environmental review that would be required and overall environmental review approach.
52. Provide environmental review and analysis of proposed SFMTA projects and policies; prepare documents for compliance with CEQA, including, but not limited to, Exemptions, Initial Studies / Environmental Evaluation Checklist, Negative Declaration / Mitigated Negative Declaration, Draft and Final Environmental Impact Reports (EIR), Addendums, Supplemental and Subsequent EIRs, Mater EIRs and any other CEQA documents or portions thereof including the technical studies to support such documents.
53. Preparation of NEPA documents, such as but not limited to Categorical Exclusion memos/forms, Initial Studies, Environmental Assessments, Findings of No Significant Impacts, addenda or portions of aforementioned documents as well as documents necessary for Section 106 and 4(f) compliance and any other documents to support NEPA documentation.
54. Preparation or review of specialized studies in the following areas:
 - a. Architectural History / Cultural Landscapes/ Historic Architectural;
 - b. Archaeological;
 - c. Biological;
 - d. Geological;
 - e. Hazardous materials;

- f. Energy & Greenhouse Gas (GHG) emissions;
 - g. Water Quality;
 - h. Noise and vibration;
 - i. Aesthetics and Visual impacts;
 - j. Wind impacts;
 - k. Air Quality;
 - l. Transportation analyses for environmental review, including but not limited to preparing Transportation Impact Studies, Synchro analysis of traffic level of service impacts from transportation projects, Vehicle Miles Traveled analysis, safety analysis, traffic device warrants, parking occupancy and utilization analysis, assessment of project impacts on transit, pedestrian and bicycle travel, loading impacts, emergency vehicle access impacts and assessments of cumulative/future traffic impacts. Analyses will be consistent with SFMTA guidance and the SF Planning Department's Transportation Impact Analysis Guidelines for Environmental Review under the direction of the SF Planning Department;
 - m. Title VI and environmental justice;
 - n. Socioeconomics;
 - o. Conduct analysis to support sea level rise vulnerability assessment; and
 - p. Mitigation Monitoring and Reporting Programs.
55. Conducting or assisting with scoping sessions and other agency and public outreach meetings.
 56. Preparing analyses or memos on environmental strategy and procedures (e.g, best practices or typical practices regarding environmental review for SFMTA projects and programs).
 57. Coordination of comments and preparation of responses from CEQA responsible agencies, along with other public and private stakeholder on draft and final SFMTA environmental documents.
 58. Implementing and reporting on mitigation monitoring programs.
 59. Review of proposed changes to CEQA and/or NEPA and drafting comment memos in response to those changes.
 60. Other related tasks as may be necessary to complete CEQA and NEPA review, including but not limited to review of documents prepared by the Planning Department and/or other Lead Agencies.

Q. Transportation Analysis and Engineering Services

The Consultant(s) shall be responsible for preparing transportation analysis and engineering services. The tasks shall include but not be limited to the following:

56. Propose and evaluate physical design improvements for complete streets projects, Parking related projects, and Parking and intermodal facilities such as transit hubs.

57. Recommend designs to improve traffic circulation patterns to reduce conflicts between transportation modes, including signalization, roadway design, and traffic.
58. Recommend and/or assess bicycle and pedestrian project designs in support of Vision Zero and Bicycle Strategy projects.
59. Drafting various design standards based on industry best practices.
60. Perform arterial, freeway, and other operational analysis using Highway Capacity Manual and related methodologies and software programs.
61. Conduct micro-simulation (e.g., Vissim) to review potential changes to the network, including but not limited to signals, signal progression, transit signal priority treatments, etc.
62. Conduct feasibility-level engineering studies.
63. Develop materials to convey transportation engineering analysis and recommendations to the general public through various written and visual media including but not limited to justifications, 3D renderings, maps and charts.
64. Perform intersection and roadway safety analysis using Highway Safety Manual and related methodologies.
65. Develop and perform project screening and prioritization.
66. Transportation Equity Analysis

R. Transportation Data Collection and Analytics

The Consultant(s) selected shall be responsible for data collection, analytics and presentation of findings. The tasks shall include but not be limited to the following:

61. Pedestrian, bicycle, and vehicle circulation and parking utilization surveys, turning movement and directional counts of multiple modes (including but not limited to speed surveys, tube counts, vehicle classification, video counts, manual counts, etc.). Counts may need to be coordinated across the city and include numerous locations. Data collection information will be in the format specified by the SFMTA, but must include, and is not limited to, the following information:
 - a. Date / Times;
 - b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
 - c. Name and contact information of consultant performing the count effort;
 - d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e. 30TH ST EB EAST OF GUERRERO)
 - ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e. LAGUNA CLAY PM);

- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
 - f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
 - g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.
62. Development, application, and analysis of surveys and market research of people using specific modes of travel to understand demographics, origins and destinations, trip making patterns, and other factors influencing travel mode choice. This could include intercept type surveys and license plate collection surveys.
 63. Research and analysis of transportation policies, including existing City and SFMTA-specific policies, and global and US/North American best practices. Outcomes to include recommendations for strategic policies.
 64. Conduct analysis of existing agency data and data from external vendors to identify and analyze travel markets, parking utilization and pricing, transit ridership, congestion metrics as well as other performance metrics.
 65. Conduct Cost/Benefit analysis for transportation related projects, including federal TIGER grant applications and conduct value capture analysis of benefits of major transit investments adjacent to new development.
 66. Provide support with development of grant proposals. Lead and/or support the development and implementation of revenue models and analysis for citywide variable-rate pricing related to parking; conduct nexus studies for rates and fees.
 67. Applying range of geospatial analysis techniques to available or developed geospatial data sets. Lead and/or support the development of geospatial data that depicts the transportation system or other relevant data.
 68. Conduct before and after studies for project implementation. This could include using tools such as Synchro or Vissim to measure modal performance.
 69. Synthesize data collected and results of analysis into well written and easily understood memorandums and/or reports, including providing well designed graphics that convey technical information.
 70. Support development of area-specific (e.g., neighborhood) parking management plans.
 71. Develop travel demand forecasting and volume projections for all modes.
 72. Develop web-based data collection/presentation tools.

Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be Amber Vasché.

**Appendix B
Calculations of Charges**

*Billing rates are applicable for all project types including efforts under
Environmental Analysis & Documentation, Transportation Analysis & Engineering,
and Transportation Data Collection & Analytics*

**Kittelson & Associates, Inc.
Prime Costs**

	Average Wage Rate	Overhead 204.96%	Profit 10%	Year 1 & 2 Billing Rate
Principal Engineer/Planner	\$81.00	\$166.01	\$24.70	\$272.00
Associate Engineer/Planner	\$53.70	\$110.06	\$16.38	\$180.00
Senior Engineer/Planner	\$41.28	\$84.61	\$12.59	\$138.00
Engineer/Planner	\$36.18	\$74.15	\$11.03	\$121.00
Transportation Analyst	\$30.26	\$62.02	\$9.23	\$102.00
Graphic Artist	\$39.01	\$79.95	\$11.90	\$131.00
Senior Technician / CADD	\$36.56	\$74.94	\$11.15	\$123.00
Technician / CADD	\$26.62	\$54.56	\$8.12	\$89.00
Writer	\$28.29	\$57.97	\$8.63	\$95.00
Office Support	\$23.45	\$48.07	\$7.15	\$79.00

Shown above are weighted average category hourly billing rates escalated 2% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

Iteris, Inc.
Sub-Consultant Costs

	Average Wage Rate	Overhead 167.92%	Profit 10%	Year 1 & 2 Billing Rate
Associate VP/VP III	\$100.91	\$169.45	\$27.04	\$297.00
Associate VP/VP II	\$90.82	\$152.51	\$24.33	\$268.00
Senior II: Eng/Planner/Sys/Soft	\$88.80	\$149.11	\$23.79	\$262.00
Associate VP/VP I	\$80.72	\$135.55	\$21.63	\$238.00
Senior I: Eng/Planner/Sys/Soft	\$72.65	\$122.00	\$19.47	\$214.00
Eng/Planner/Sys/Soft	\$62.57	\$105.06	\$16.76	\$184.00
Associate II: Eng/Planner/Sys/Soft	\$52.47	\$88.11	\$14.06	\$155.00
Associate I: Eng/Planner/Sys/Soft	\$46.42	\$77.95	\$12.44	\$137.00
Assistant II: Eng/Planner/Sys/Soft	\$40.36	\$67.77	\$10.81	\$119.00
Assistant I: Eng/Planner/Sys/Soft	\$34.31	\$57.62	\$9.19	\$101.00

Shown above are average category hourly billing rates escalated 2% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

ICF Jones & Stokes
Sub-Consultant Costs

	Average Wage Rate	Overhead 164.32%	Profit 10%	Year 1 Billing Rate	Year 2 Billing Rate
Senior Project Director*	\$127.37	\$209.29	\$33.67	\$290.00	\$298.70
Project Director	\$88.27	\$145.05	\$23.33	\$256.65	\$264.35
Technical Director	\$80.85	\$132.85	\$21.37	\$235.07	\$242.13
Senior Technical Analyst	\$77.33	\$127.07	\$20.44	\$224.84	\$231.58
Managing Consultant	\$71.50	\$117.49	\$18.90	\$207.89	\$214.12
Senior Consultant III	\$66.50	\$109.27	\$17.58	\$193.35	\$199.15
Senior Consultant II	\$57.48	\$94.45	\$15.19	\$167.12	\$172.14
Senior Consultant I	\$52.50	\$86.27	\$13.88	\$152.64	\$157.22
Associate Consultant III	\$49.75	\$81.75	\$13.15	\$144.65	\$148.99
Associate Consultant II	\$44.90	\$73.78	\$11.87	\$130.55	\$134.46
Associate Consultant I	\$39.43	\$64.79	\$10.42	\$114.64	\$118.08
Assistant Consultant	\$35.97	\$59.11	\$9.51	\$104.58	\$107.72
Administrative Technician	\$24.25	\$39.85	\$6.41	\$70.51	\$72.62
Technician	\$23.00	\$37.79	\$6.08	\$66.87	\$68.88
Intern	\$18.00	\$29.58	\$4.76	\$52.34	\$53.91

*Represents a voluntary rate reduction.

Shown above are weighted average category hourly billing rates for the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Fall Line Analytics
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Principal / Researcher	\$200.00	\$206.00

As a sole proprietor and small business, only flat hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Panorama Environmental
Sub-Consultant Costs**

	Wage Rate Range	Overhead 178%	Profit 10%	Year 1 Billing Rate	Year 2 Billing Rate
Principal	\$77.00	\$137.06	\$21.41	\$235.47	\$242.53
Senior Manager	\$67.31	\$119.81	\$18.71	\$205.83	\$212.01
Senior Project Manager / Scientist IV	\$65.38	\$116.38	\$18.18	\$199.93	\$205.93
Project Manager / Scientist III	\$50.48	\$89.85	\$14.03	\$154.37	\$159.00

	Wage Rate Range	Overhead 178%	Profit 10%	Year 1 Billing Rate	Year 2 Billing Rate
Environmental Scientist II / Staff II	\$36.06	\$64.19	\$10.02	\$110.27	\$113.58
Environmental Scientist I	\$31.25	\$55.63	\$8.69	\$95.56	\$98.43
GIS Specialist	\$40.87	\$72.75	\$11.36	\$124.98	\$128.73
Graphic Specialist	\$41.00	\$72.98	\$11.40	\$125.38	\$129.14
Senior Biologist	\$50.00	\$89.00	\$13.90	\$152.90	\$157.49

Shown above are average category hourly billing rates for the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

Seifel Consulting Sub-Consultant Costs

	Year 1 Billing Rate	Year 2 Billing Rate
President	\$250.00	\$258.00
Senior Managing Consultant	\$195.00	\$201.00
Managing Consultant	\$175.00	\$180.00
Senior Consultant	\$150.00	\$155.00
Consultant	\$125.00	\$129.00
Analyst	\$115.00	\$118.00
Research Analyst	\$105.00	\$108.00
Administrative Support	\$80.00	\$82.00

As a small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Baymetrics
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Project Manager	\$233.00	\$240.00
Project Supervisor	\$218.00	\$224.00

As a small business, only flat hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

Costs for services such as Turning Movement Counts, Pedestrian & Bicycle Counts, Volume/Speed/Classification counts, etc. provided at the time of Task Assignment and Scope of Work.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Adavant Consulting
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Principal	\$210.00	\$216.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**VerPlanck Historic Preservation Consulting
Sub-Consultant Costs**

	Year 1 Billing Rate	Year 2 Billing Rate
Principal	\$135.00	\$139.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each

task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**GeoTechnical Consultants, Inc.
Sub-Consultant Costs**

	Average Wage Rate	Overhead 160.90%	Profit 10%	Year 1 & 2 Billing Rate
Principal Geotechnical	\$100.00	\$160.90	\$26.09	\$287.00
Associate Geotechnical Engineer	\$70.00	\$112.63	\$18.26	\$201.00
Senior Engineer/Geologist	\$55.00	\$88.50	\$14.35	\$158.00
Project Engineer/Geologist	\$45.00	\$72.41	\$11.74	\$129.00

Shown above are weighted average category hourly billing rates escalated 2% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Alfred Williams Consultancy, LLC
Sub-Consultant Costs**

	Average Wage Rate	Overhead 101.82%	Profit 10%	Year 1 & 2 Billing Rate
Officer / Principal-in	\$108.74	\$110.71	\$21.94	\$241.00

	Average Wage Rate	Overhead 101.82%	Profit 10%	Year 1 & 2 Billing Rate
Charge				
Project Manager	\$85.83	\$87.39	\$17.32	\$191.00

Shown above are hourly billing rates escalated 1.3% given the initial two year period of the contract. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract terms updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

PreVision Graphics Sub-Consultant Costs

	Year 1 Billing Rate	Year 2 Billing Rate
Principal / 3D Renderer	\$175.00	\$180.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial two year period of the contract. Upon the City electing to extend the contract term updated billing rates will be provided.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

Traffic Research & Analysis, Inc.
Sub-Consultant Costs

	Wage Rate	Overhead 165%	Profit 10%	Year 1 & 2 Billing Rate
Senior Project Manager	\$48.84	\$80.58	\$12.94	\$142.00
Principal	\$42.08	\$69.42	\$11.15	\$123.00
Program Manager	\$40.80	\$67.32	\$10.81	\$119.00
Administrator	\$20.45	\$33.74	\$5.42	\$60.00
Field Technician	\$16.32	\$26.93	\$4.32	\$48.00

As a self-employed small business, only full hourly billing rates are available. These category billing rates will be invoiced during the initial 12-month period of the contract. Billing rates will be negotiated for the second 12-month period, and, as needed, upon the City electing to extend the contract terms.

Costs for services such as Turning Movement Counts, Pedestrian & Bicycle Counts, Volume/Speed/Classification counts, etc. provided at the time of Task Assignment and Scope of Work.

REIMBURSABLE COSTS

Reimbursable costs to be expensed at GSA per diem rates for lodging and meals & incidental expenses for San Francisco. <http://www.gsa.gov/portal/category/100120>

Project-specific travel expenses will be identified in the scope and budget for each task order and approved at the discretion of the task order project manager.

Receipts will be provided for project-specific travel expenses.

Expenses for public transportation or local travel to and from meetings are not eligible for reimbursement.

**Appendix C
Task Order Request Form**

San Francisco Municipal Transportation Agency

SFMTA-2016-12/1 (FHWA)

Consultant Name: _____

TASK ORDER DESCRIPTION

Type of Request: _____ Date Initiated: _____ <input type="checkbox"/> New Task Order- No. _____ PSC Balance as of this request: _____ <input type="checkbox"/> Modification - No. _____
DBE Goal (%): _____ (attach CCO approval memo) Total Budget Amount: \$ _____ Index Code: _____ Amount: \$ _____ Index Code: _____ Amount: \$ _____ [Insert additional lines for budget and index codes as required]
TASK TITLE
BRIEF SUMMARY OF WORK TO BE PERFORMED
SCHEDULE Start Date: _____ Estimated Completion Date: _____
APPROVALS Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section] Approved _____ Date: _____ [name] Project Manager, [SSD Subdivision/Section] Approved _____ Date: _____ Tom Maguire Director of Sustainable Streets

Appendix D
Consultant Checklist for Document Submittals

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)

Task Order Number: _____

Task Order Title: _____

This checklist must be filled in by the consultant and a signed copy must accompany each administrative draft document submitted to Environmental Planning (EP) and/or SFMTA. Exceptions to any checklist item must be approved in advance. Items that are not applicable should be marked “NA” (not applicable) with an explanation. If any of the items are not addressed, the document may be returned unread for revision and resubmittal.

66. Document is edited for grammatical and typographical errors, clarity, and format.
67. Document cover/first page identifies the number of the draft (e.g., 1, 2, 3), Task Order number (if applicable, project number and title), date of submittal, and, if applicable, State Clearinghouse Number.
68. Each page contains header or footer stating “Administrative Draft – Subject to Change” (except for the final print check).
69. All document sections, tables, figures, appendices, etc. are submitted.
70. Footnotes are on same page as the reference (no endnotes).
71. Tables and figures are checked for accuracy, figures include a north arrow, each table and figure includes a source.
72. Text references to tables, figures, and to other text refer to the correct pages, tables, figures, or text.
73. Data in tables and figures are cross-checked with text.
74. Changes made in response to comments on previous administrative draft are clearly marked in new text with strikethrough and underline.
75. Changes *not* made in response to comments on previous administrative drafts are explained in writing on annotated comments or accompanying memo.
76. Raw data and assumptions (background material) for all calculations are submitted in a file folder with the administrative draft document, unless previously submitted.
77. All document background reports are finalized and included with the submittal packet.
78. Deliverables for multi-modal counts must be formatted to include the information described below. The following are subject to non-substantive changes, or additional criteria, as agreed by SFMTA and the Consultant at the Task Order level:
 - a. Date / Times;

- b. Location including photo and GPS coordinates. If counts performed by camera, a snapshot of video view is acceptable;
- c. Name and contact information of consultant performing the count effort;
- d. Naming convention: Raw files must be named per SFMTA protocol for Official Records as follows:
 - i. For Machine Counts: Street Name_Direction of Approach_Cross Street (i.e., 30TH ST EB EAST OF GUERRERO)
 - ii. For Turning Movement Counts by Hand: Street Name_Cross Street_Time of Day (i.e., LAGUNA CLAY PM);
- e. If multiple days or data points, deliverables must be formatted as one Microsoft Excel file with multiple tabs (versus sending us multiple files for same location);
- f. Complex intersections may require confirmation of geometrics (legs of the intersection, N/S naming convention, etc.) prior to completing turn counts; and
- g. Writable Microsoft Excel file format is default unless expressed otherwise by SFMTA.

Notes:

Firm Name: _____

Consultant Name: _____

Consultant Signature: _____

Date: _____

Appendix E
U.S. DOT FEDERAL REQUIREMENTS FOR PERSONAL SERVICES
CONTRACTS

LXXVI. DEFINITIONS

- QQ. Approved Project Budget** means the most recent statement, approved by the U.S. DOT, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- RR. California Department of Transportation (Caltrans)** is an agency of the State of California and a direct recipient of grant funds from FHWA.
- SS. City means** the City and County of San Francisco, a municipal corporation, and its departments and agencies.
- TT. Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from U.S. DOT.
- UU. Cooperative Agreement** means the instrument by which U.S. DOT awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which U.S. DOT takes an active role or retains substantial control.
- VV. Federal Highway Administration (FHWA)** is an operating administration of the U.S. DOT.
- WW. Federal Directive** includes any federal circular, notice, order or guidance providing information about DOT or FHWA programs, application processing procedures, and Project management guidelines.
- XX. Grant Agreement** means the instrument by which FHWA, acting through CalTrans, awards federal assistance to a specific Recipient to support a particular Project, and in which FHWA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- YY. Government** means the United States of America and any executive department or agency thereof.
- ZZ. 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. For FHWA projects, the term "Project" means the task or set of tasks listed as described in the grant application and grant agreement between Caltrans and the Subrecipient.
- AAA. Recipient** means any entity that receives federal assistance from U.S. DOT, FTA, FHWA or through CalTrans using DPT funds to accomplish the Project. For the purpose of this Agreement, Recipient is the City.
- BBB. Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- CCC. Subrecipient** means the San Francisco Municipal Transportation Agency, an agency of the City and County of San Francisco, which receives Federal assistance through Caltrans.

DDD. **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 U.S. DOT.

EEE. **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 U.S. DOT.

FFF. **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

LXXVII. FEDERAL CHANGES

Contractor shall at all times comply with all applicable federal regulations, policies, procedures and directives, including without limitation those listed directly or by reference in any grant agreement for work under this Agreement, 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.

LXXVIII. ACCESS TO RECORDS

J. The Contractor agrees to provide the City and County of San Francisco, the U.S. DOT Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

K. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

L. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the U.S. DOT 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).

LXXIX. DEBARMENT AND SUSPENSION

The City is prohibited from making any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." By submitting a Proposal, and separately by executing this Agreement, Contractor certifies that it is not debarred or otherwise prohibited from bidding on, proposing for, and entering into this Agreement.

This is a material representation of fact by Contractor that City will rely upon in determining Contractor's responsibility and eligibility for award of the Agreement. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR Parts 180, Subpart C and 1200, Subpart C while its Proposal is valid and throughout the term of this Agreement and any other contract

with the City. Contractor shall a provision requiring compliance with those authorities and this Section in its subcontracts and other lower tier covered transactions.

II. COST PRINCIPLES

- E. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- F. Consultant also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- G. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 49 CFR Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to City.
- H. All reimbursements to Contractor will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

LXXX. TRAVEL AND PER DIEM PAYMENTS

Reimbursements to Contractor and its subcontractors for travel and subsistence (per diem) expenses shall not exceed rates authorized to be paid rank and file California State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by Contractor are in excess of DPA rates, Contractor is responsible for the cost difference, and any overpayments inadvertently paid by City shall be reimbursed to City by Contractor on demand within 30 days of invoice.

LXXXI. ACCOUNTING SYSTEM

Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs by line item for the Project. The accounting system of shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by City.

LXXXII. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor; to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or violation of this warranty, the SFMTA shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

LXXXIII. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- G. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- H. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by U.S. DOT. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

LXXXIV. CIVIL RIGHTS

- G. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements U.S. DOT may issue.
- H. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:
 - 10. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements U.S. DOT may issue.
 - 11. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements U.S. DOT may issue.
 - 12. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans

with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements U.S. DOT may issue.

- G. **Flowdown to Subcontractors.** The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by U.S. DOT, modified only if necessary to identify the affected parties.
- H. **Contract Assurance.** The Contractor and its subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or its subcontractors 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.

LXXXV. CIVIL RIGHTS – STATE

- D. In the performance of this Agreement, Contractor and its subcontractors shall not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its subcontractors shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. 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. Contractor and its subcontractors shall post in conspicuous places, available to employees for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment section.
- E. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.
- F. Contractor shall include the above provisions in all subcontractors to perform work under this Agreement.

LXXXVI. DBE/SBE ASSURANCES

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material

breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

LXXXVII. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by the U.S. DOT*)

- J. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the U.S. DOT.
- K. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through U.S. DOT, 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.
- L. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.

LXXXVIII. RIGHTS IN DATA AND COPYRIGHTS (*Applicable to contracts for planning, research, or development financed by U.S. DOT*)

- G. **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.
- H. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
 - 22. **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.
 - 23. **Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's

consent, the Federal Government may not extend its Federal license to any other party:

- g. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
- h. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by U.S. DOT.

24. **U.S. DOT Intention.** When U.S. DOT awards Federal assistance for an experimental, research or developmental work, it is U.S. DOT'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 U.S. DOT determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit U.S. DOT to make available to the public, either U.S. DOT's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.
25. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
26. **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.
27. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
28. **Application to Subcontractors.** Unless U.S. DOT determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.
- I. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by U.S. DOT.

- J. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through U.S. DOT, 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.

LXXXIX. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

- M. **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.
- N. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- O. **Withholding for unpaid wages and liquidated damages** - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- P. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

XC. ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

XCI. CLEAN WATER REQUIREMENTS (*applicable to all contracts in excess of \$100,000*)

- G. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to U.S. DOT and the appropriate EPA regional office.
- H. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by U.S. DOT.

XCII. CLEAN AIR (*applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any yea.*)

- G. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to U.S. DOT and the appropriate EPA Regional Office.
- H. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by U.S. DOT.

XCIII. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by U.S. DOT.

XCIV. TERMINATION FOR CONVENIENCE OF CITY (*required for all contracts in excess of \$10,000*)

See Agreement Terms and Conditions.

XCIV. TERMINATION FOR DEFAULT (*required for all contracts in excess of \$10,000*)

See Agreement Terms and Conditions.

XCVI. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

- J. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has

made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the U.S. DOT-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- K. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by U.S. DOT under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- L. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by U.S. DOT. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XCVII. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XCVIII. ITS ARCHITECTURE POLICY (*Applicable to contracts for ITS projects*)

If providing Intelligent Transportation Systems (ITS) property or services, Contractor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, U.S. DOT Notice, "U.S. DOT National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives U.S. DOT may issue.

XCIX. SAFETY

- A. Consultant shall comply with California OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by SFMTA's Safety Officer and other SFMTA representatives.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

C. 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.

CI. 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.

CII. INCORPORATION OF DOT 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 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause the City to be in violation of the DOT terms and conditions.